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THE

MILITARY CODE

OF

PENNSYLVANIA.-Legislature

ACT OF ASSEMBLY APPROVED APRIL 13, 1887, AMENDED MAY 9, 1889, JUNE 2, 1891, JUNE 10, 1893, JULY 5, 1895, MAY 5, 1897, AND APRIL 14, 1897, PROVIDING FOR THE ORGANIZATION, DISCIPLINE AND REGULATION OF THE NATIONAL GUARD OF PENNSYLVANIA; TOGETHER WITH ACT OF ASSEMBLY APPROVED MAY 15, 1893, PROVIDING FOR THE ESTABLISHMENT AND GOVERNMENT OF A STATE NAVAL MILITIA. ALSO, ACT OF ASSEMBLY APPROVED JUNE 26, 1895.

PRINTED FOR THE USE OF THE NATIONAL GUARD OF PENNSYLVANIA.

WM. STANLEY RAY,
STATE PRINTER OF PENNSYLVANIA.
1898.

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THE MILITARY CODE

OF PENNSYLVANIA.

AN ACT

To provide for the organization, discipline and regulation of the National Guard of Pennsylvania.

Name.

Section 1. Be it enacted, &c., That the active militia of this Commonwealth shall hereafter be styled the National Guard of Pennsylvania, and shall be subject, at all times, to the orders of their officers.

Peace organization.

Section 2. In the time of peace, the National Guard shall consist of not more than one hundred and fifty companies of infantry, five troops of cavalry and five batteries of artillery, four companies of engineers and a signal corps of one company, fully armed, uniformed and equipped, to be allotted and apportioned in such localities of the State as the necessity of the service, in the discretion of the Commander-in-Chief may require, and organized in such divisions, brigades, regiments, battalions and unassigned companies, with power to make such alterations in the organization and arrangement thereof, from time to time, as he may deem necessary: Provided, That there shall not be more than one major general and five brigadier generals of the line. But the Commander-in-Chief shall have power, in case of war, invasion, insurrection, riot or imminent danger thereof, to increase the said force and organize the same as the exigencies of the occasion may require: Provided, That whenever an officer shall be re-commissioned within six months after the expiration of his original commission, in the same grade, or in a lower grade than that in which he has served in the National Guard, his new commission shall bear even date with and he shall take rank from the date provided for in his former commission.

Allotment and apportionment to be in the discretion of the Commander-in-Chief.

Generals of the line.

Organization may be increased in case of war, &c., by the Commander-in-Chief.

Re-commissioned officers to rank from date of former commission.

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§2. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, reads as follows:

"In the time of peace, the National Guard shall consist of not more than one "hundred and fifty companies of infantry, five troops of cavalry and five bat- "teries of artillery, fully armed, uniformed and equipped, to be allotted and

Organization, system of discipline, &c., to be similar to those of the United States army.

Section 3. The organization of the National Guard shall conform generally to the provisions of the laws of the United States, and the system of discipline and exercise shall conform, as nearly as may be, to those of the army of the United States; and the Commander-in-Chief is hereby authorized to make changes and alterations therein, but such modifications shall conform, as nearly as practicable, to said laws, system, discipline and exercises; and each non-commissioned officer and private shall, at the time of enlisting, sign two enlistment papers, according to a form prescribed by the Adjutant General, one copy of which shall be retained by the company commander and one forwarded to and filed in the office of the Adjutant General; but, before any recruit shall be enlisted, he shall be subjected to the requisite physical examination by a regimental surgon, or any surgeon or physician designated by the regimental commander, or commander of unassigned company, and the certificate of said surgeon or physician shall accompany said papers.

Changes and alterations.

Duplicate enlistment papers.

Physical examination.

Surgeon's certificate.

Officers.

Section 4. The officers and non-commissioned officers of the National Guard shall be, as follows:

Commander-in-Chief and his staff, with the rank of same.

A Commander-in-Chief. The staff of the Commander-in-Chief shall consist of one Adjutant General, with the rank of brigadier general; one inspector general, one judge advocate general, one quartermaster general, one commissary general, one surgeon general, one general inspector of rifle practice and one chief of artillery, each with the rank of colonel; one Assistant Adjutant General, one assistant quartermaster general and one assistant commissary general, each with the rank of lieutenant colonel; and twelve aids-de-camp, each with the rank of lieutenant colonel; one sergeant

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"apportioned in such localities of the State as the necessity of the service, in the "discretion of the commander-in-chief may require, and organized in such "divisions, brigades, regiments, battalions and unassigned companies, with "power to make such alterations in the organization and arrangement thereof, "from time to time, as he may deem necessary: Provided, That there shall "not be more than one major general and five brigadier generals of the line. "But the commander-in-chief shall have power, in case of war, invasion, in-"surrection, riot or imminent danger thereof, to increase the said force and "organize the same as the exigencies of the occasion may require: Provided, "That whenever an officer shall be re-commissioned within six months after "the expiration of his original commission, in the same grade, or in a lower "grade than that in which he has served in the National Guard, his new com-"mission shall bear even date with and he shall take rank from the date provided "for in his former commission."

§3. "1. Enlistments date, not as to the time the recruit 'joins' a company of the "National Guard, but from the final signing of the duplicate enlistment papers, "as prescribed in the third section of the military code.

"2. The medical examination must precede the enlistment. It follows there-"fore that the surgeon's certificate should bear even or prior date to the enlist-"ment affidavit or at least certify the exact day of such examination.

"3. If the certificate affirmatively shows the priority of such examination and, "of course, that all physical requirements have been complied with, then the "affidavit—in duplicate—should be properly filled up, subscribed by the recruit "and attested by, either a civil officer empowered to administer oaths, or by one "of the classes of military officers similarly authorized by section 29, of the code." —*Judge Advocate General, N. G. P., November 30, 1889.*

major, one quartermaster sergeant, one commissary sergeant, one chief musician and one color sergeant.

Major general and his staff.

Section 5. To the Division there shall be one major general; and one Assistant Adjutant General, one division inspector, one judge advocate, one division quartermaster, one commissary of subsistence, one surgeon-in-chief, one ordnance officer and one inspector of rifle practice, each with the rank of lieutenant colonel; and three aids-de-camp, each with the rank of major; one division sergeant major, one division quartermaster sergeant, one division commissary sergeant, one division ordnance sergeant, one division chief musician and one color sergeant.

Brigadier general and his staff.

Section 6. To each brigade there shall be one brigadier general; and one assistant adjutant general, one brigade inspector, one judge advocate, one brigade quartermaster, one brigade commissary of subsistence, one brigade surgeon, one brigade ordnance officer, each with the rank of major; two aids-de-camp, each with the rank of captain; one brigade sergeant major, one brigade quartermaster sergeant, one brigade commissary sergeant, one brigade ordnance sergeant, one brigade chief musician and one color sergeant.

Officers of regiment of infantry.

Section 7. To each regiment of infantry, one colonel, one lieutenant colonel, not to exceed three majors at the discretion of the Commander-in-Chief, one surgeon with the rank of major, one chaplain with the rank of captain, one adjutant (an extra first lieutenant), one quartermaster (an extra first lieutenant), two assistant surgeons with the rank of first lieutenant, one inspector of rifle practice (an extra first lieutenant), one sergeant major, one regimental quartermaster sergeant, one regimental commissary sergeant, one color sergeant, one hospital steward and one principal musician.

To each battalion of not less than four companies of a regiment of infantry, one major, one adjutant (an extra second lieutenant), one sergeant major.

Officers and men of troop of cavalry.

Section 8. To every troop of cavalry one captain, one first lieutenant, one second lieutenant, one assistant surgeon with the rank of first lieutenant, one quartermaster with the rank of second lieutenant, one first sergeant, one quartermaster sergeant, one commissary sergeant, five sergeants, eight corporals, two trump-

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§7. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"To each regiment of infantry, one colonel, one lieutenant colonel, not to exceed "three majors at the discretion of the commander-in-chief, one surgeon with "the rank of major, one chaplain with the rank of captain, one adjutant (an extra "first lieutenant), one quartermaster (an extra first lieutenant), two assistant "surgeons with the rank of first lieutenant, one inspector of rifle practice (an "extra first lieutenant), one sergeant major, one regimental quartermaster ser-"geant, one regimental commissary sergeant, one hospital steward and one "principal musician."

§8. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"To every troop of cavalry one captain, one first lieutenant, one second lieuten-"ant, one assistant surgeon with the rank of first lieutenant, one first sergeant,

eters, two farriers or blacksmiths, one saddler, one wagoner and twenty-eight privates minimum, thirty-eight privates maximum.

Officers and men of company of infantry.

To every company of infantry one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, thirty-five privates minimum, forty-five privates maximum.

Battery of artillery, officers and men.

To every battery of artillery one captain, two first lieutenants, one second lieutenant, one assistant surgeon with the rank of first lieutenant, one quartermaster with the rank of second lieutenant, one first sergeant, one quartermaster sergeant, one commissary sergeant, four sergeants, eight corporals, two musicians, two artificers, one wagoner and forty-six privates minimum and fifty-six privates maximum.

Officers and men of company of engineers.

To every company of engineers one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, thirty-five privates minimum, forty-five privates maximum.

Signal corps, officers and men.

To the signal corps of one company, one captain, one first lieutenant, one second lieutenant, one first sergeant, three sergeants, four corporals, two musicians and twenty-eight privates minimum, and thirty-two privates maximum.

Company clerk.

To every company there shall be one clerk, who shall be detailed for that duty from the company.

The word "company" defined.

For all the purposes of this act the word company or companies shall apply to and include the infantry, cavalry, artillery, engineer and signal corps forces.

"one quartermaster sergeant, one commissary sergeant, five sergeants, eight cor-
"porals, two trumpeters, two farriers or blacksmiths, one saddler, one wagoner,
"and twenty-eight privates minimum, thirty-eight privates maximum.

"To every company of infantry one captain, one first lieutenant, one second
"lieutenant, one first sergeant, four sergeants, eight corporals, two musicians,
"thirty-five privates minimum, forty-five privates maximum.

"To every battery of artillery one captain, two first lieutenants, one second
"lieutenant, one assistant surgeon with the rank of first lieutenant, one first
"sergeant, one quartermaster sergeant, four sergeants, eight corporals, two
"musicians, two artificers, one wagoner, and forty-six privates minimum, and
"fifty-six privates maximum.

"To every company there shall be one clerk, who shall be detailed for that duty
"from the company.

"For all the purposes of this act the word company or companies shall apply to
"and include the infantry, cavalry and artillery forces."

Section 8 amended by act of Assembly approved May 9, 1889, which read as follows:

"To every troop of cavalry one captain, one first lieutenant, one second lieu-
"tenant, one assistant surgeon with the rank of first lieutenant, one quarter-
"master with the rank of second lieutenant, one first sergeant, one quarter-
"master sergeant, one commissary sergeant, five sergeants, eight corporals, two
"trumpeters, two farriers or blacksmiths, one saddler, one wagoner, and twenty-
"eight privates minimum, thirty-eight privates maximum.

"To every company of infantry one captain, one first lieutenant, one second
"lieutenant, one first sergeant, four sergeants, eight corporals, two musicians,
"thirty-five privates minimum, forty-five privates maximum.

"To every battery of artillery one captain, two first lieutenants, one second
"lieutenant, one assistant surgeon with the rank of first lieutenant, one quar-
"termaster with the rank of second lieutenant, one first sergeant, one quarter-
"master sergeant, four sergeants, eight corporals, two musicians, two artificers,
"one wagoner, and forty-six privates minimum, and fifty-six privates maxi-
"mum.

"To every company there shall be one clerk, who shall be detailed for that
"duty from the company.

"For all the purposes of this act the word company or companies shall apply
to and include the infantry, cavalry and artillery forces."

Duties of officers.

Section 9. The departmental and military duties of the officers provided for in this act shall be correlative with those discharged by similarly designated officers in the United States army.

How military officers are to be chosen.

Section 10. The military officers of the State shall be chosen, as follows:

Major general.

The major general, by the Commander-in-Chief, with the consent of the Senate.

Brigadier general.

Brigadier general, by the Commander-in-Chief, with the consent of the Senate.

Field officers.

Field officers of regiments and battalions, by the written or printed votes of a majority of the commissioned officers of the companies of the respective regiments and battalions.

Company commanders.

The commissioned officers of companies, by the written or printed votes of a majority of the non-commissioned officers and privates of the respective companies.

To give bonds.

Company commanders shall give bonds, in the sum of one thousand dollars, in form to be prescribed by the Adjutant General, conditioned for the faithful discharge of the duties of their office.

Appointment of staff officers.

Section 11. The staff officers of the military force of the State shall be appointed in the manner following:

The Adjutant General, the quartermaster general, the commissary general and the surgeon general by the Commander-in-Chief, with the consent of the Senate.

The inspector general, judge advocate general, general inspector of rifle practice, and chief of artillery by the Commander-in-Chief.

The Assistant Adjutant General, by the Adjutant General.

The assistant quartermaster general, by the quartermaster general.

The assistant commissary general, by the commissary general.

The aids to the Commander-in-Chief and the non-commissioned staff, by the Commander-in-Chief.

Quartermaster and commissary general, each to give bond.

Section 12. Before entering upon the duties of their offices, the quartermaster general and the commissary general shall each give bond to the State, in the penal sum of twenty thousand dollars, to be approved by the Governor, conditioned faithfully to discharge the duties of their respective offices.

Assistants to give bond.

Section 13. The assistant quartermaster general and the assistant commissary general shall [each] give bonds to the Commonwealth for the faithful performance of their respective duties, in such sums as may be approved by the Governor.

Appointment of division assistant adjutant general, inspector, &c.

Section 14. The division assistant adjutant general, inspector, quartermaster, judge advocate, commissary of subsistence, surgeon-in-chief, ordnance officer, inspector of rifle practice and the aids-de-camp of the major general shall be appointed by the major general and approved by the Commander-in-Chief.

Appointment of brigade assistant adjutant general, inspector, &c.

Section 15. The brigade assistant adjutant general, inspector, judge advocate, quartermaster, commissary of subsistence, surgeon, ordnance officer and the aids-de-camp to brigadier generals shall be appointed by the respective brigadier generals approved by the Commander-in-Chief.

Appointment of chaplains, adjutants, &c.

Section 16. Chaplains, adjutants, quartermasters and inspectors of rifle practice shall be appointed by the respective colonels, surgeons and assistant surgeons of regiments by the respective colonels and approved by the surgeon general.

Adjutants and quartermasters of battalions by the respective majors.

Assistant surgeons.

Assistant surgeons of battalions by the respective majors, to be approved by the surgeon general.

Assistant surgeons of troops of cavalry and artillery batteries by the respective captains, to be approved by the surgeon general.

Quartermasters of troops and batteries.

Quartermasters of troops of cavalry and artillery batteries by the respective captains.

Non-commissioned staff officers.

Division, brigade, regimental and battalion non-commissioned staff officers by their respective commanders.

Non-commissioned company officers.

Non-commissioned officers of companies by the respective captains, approved by their respective commanding officers.

Clerks.

Clerks, by the commanding officers of the respective companies.

Regimental quartermasters to give bond.

Regimental quartermasters shall give bonds in the sum of eight thousand dollars, conditioned for the faithful discharge of their office.

Bonds of quartermasters of troops and batteries.

Quartermasters of troops of cavalry and artillery batteries shall give bonds in the sum of one thousand dollars, conditioned for the faithful discharge of the duties of their office.

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§16. Act of Assembly approved May 9, 1889. Original act of April 13, 1887, reads as follows:

"Chaplains, adjutants, quartermasters and inspectors of rifle practice shall be "appointed by the respective colonels, surgeons and assistant surgeons of regi- "ments by the respective colonels and approved by the surgeon general.

"Adjutants and quartermasters of battalions, by the respective majors.

"Assistant surgeons of battalions by the respective majors, to be approved by "the surgeon general.

"Assistant surgeons of troops of cavalry and artillery batteries by the respec- "tive captains, to be approved by the surgeon general.

"Division, brigade, regimental and battalion non-commissioned staff officers, "by their respective commanders.

"Non-commissioned officers of companies by the respective captains, approved "by their respective commanding officers.

"Clerks, by the commanding officers of the respective companies.

"Regimental quartermasters shall give bonds in the sum of eight thousand "dollars, conditioned for the faithful discharge of their office.

§16. Civilian Staff Officers.

"In answer to numerous inquiries on this subject, I would say: I can find "no authority for a colonel to appoint civilians, under the title of paymasters, "commissary, etc., on the staff, while the command is on a peace footing. Nor "does it appear under the Code, that officers' commissions could issue or ever "have issued to such civilians.

"I presume that such 'officials' are mere honorary assistants who wear the "uniforms, as do certain ex-members of regiments and companies enrolled in "veteran corps, viz., by authority of their respective organizations and not under "any law of the Commonwealth.

Appointment of non-commissioned company officers when company has no officers.

Section 17. When a company has neither commissioned nor non-commissioned officers, the commander of the regiment or battalion, to which it belongs, shall appoint suitable persons within said company to be non-commissioned officers thereof, and shall appoint a suitable person to be clerk, endorse the appointment on his warrant, administer the oath to him and certify the same.

Non-commissioned officers to be appointed from the organization.

Preference to be given veterans, &c.

Penalty for refusal or neglect.

Section 18. The appointment of non-commissioned officers of the National Guard shall, in all cases, be made from the organization to which they are attached, and the preference shall be given to men of military abilities and experience, who have been in active service in war, or been educated for the army. If any officer of a company, battalion or regiment shall refuse or neglect to obey these requirements, he shall forfeit his commission.

Officers to be commissioned on returns made to the Adjutant General.

Non-commissioned officer's warrants.

Appointments of clerks to be certified.

Section 19. All commissioned officers shall be commissioned by the Commander-in-Chief, according to the respective offices and grades to which they shall be elected or appointed, on returns of election or certificate of appointment made through the Adjutant General. Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment, battalion, or unassigned company. All clerks shall have their appointments certified, on the back of their warrants, by the commanding officer of the respective companies.

Major generals and brigadier generals to be notified by the Adjutant General.

Section 20. The major general and brigadier general shall be notified of their appointment by the Adjutant General, and unless, within thirty days after such notice, they signify their acceptance of the office they shall be taken to have refused the same.

Officers presiding at elections.

Candidates not to preside.

Record to be kept.

Section 21. Officers ordering elections may preside, or detail some officer of equal or superior rank to the office to be filled, but no candidate shall preside at an election, except to adjourn the meeting, if no proper officer appears to preside. At all elections such presiding officer shall keep a record of the proceedings and make return thereof to the Adjutant General through the proper military channels.

Notice of the election to be given.

Persons elected to be notified forthwith, and return thereof made.

Electors to be in uniform.

Acceptance.

Section 22. Ten days' notice of election shall be given, except when in annual camp, or in actual service, when at least forty-eight hours' notice shall be given. The person who has a majority of the written or printed votes of the electors shall be deemed elected, and the presiding officer shall forthwith notify him of his election and make return thereof: Provided, That a majority of the electors shall be present in uniform. Every person so elected and notified shall accept, if a field

"I believe that such wearing of uniforms is tolerated without being affirmatively approved by the Commander-in-Chief. Certain it is, that the uniform confers no right to its wearer to be inspected or enrolled as an officer of the National Guard of Pennsylvania."—*Judge Advocate General, N. G. P., Nov. 30, 1899.*

Refusals to be recorded and made part of the return.

officer within ten days, or if a company officer, within five days, otherwise he shall be taken to have refused; if, before the meeting for the election of any officer is dissolved, the person chosen signifies to the presiding officer his refusal to accept the same, such refusal shall be recorded and made part of the return, and the electors shall proceed to another election. Elections may be adjourned not exceeding twice, and each adjournment for a period not exceeding ten days; but no election shall be legal, unless notice has been given in the manner already prescribed. The roster of the regiment, or battalion, or the proper roll of the company, as the case may be, shall be produced at such elections, by the person having the legal custody thereof.

New election.

Adjournment.

Roster to be produced at all elections.

Election of company officers regulated.

Section 23. No election of officers shall be ordered in a company hereafter organized, unless at least the prescribed minimum number of men have been enlisted therein; upon the enlistment of that number and notification given to the Commander-in-Chief, by one or more of the petitioners for the company, attested by the mayor of a city, or the commissioners of a county, an election of officers shall be ordered; and if there is no officer of the National Guard, conveniently located to preside at such an election, the Commander-in-Chief may issue an order for that purpose, to one or more of the councilmen, mayor of the city, or commissioners of a county, where a majority of the petitioners reside.

Acceptance of an office by a commissioned officer vacates prior office.

Acceptance to constitute a part of the return of election.

Section 24. When an officer holding a military commission is elected to another office in the National Guard and accepts the same, such acceptance shall constitute a part of the return of the presiding officer and shall vacate the office previously held.

Refusal to accept to be endorsed on commission.

New election.

Section 25. When a person, elected or appointed to an office, refuses to accept his commission, or qualify at the time of acceptance, the brigade commander shall certify the fact on the back thereof, and return it to the Adjutant General; and, if the office is elective, a new election shall be ordered.

Exemption from arrest.

Section 26. No officer or soldier shall be arrested on civil process, while going to, remaining at, or returning from a place where he is ordered to attend for election of officers, or military duty.

Commissioned officers to be sworn.

Section 27. Every commissioned officer, before he enters upon the duties of his office, or exercises any command, shall take and subscribe, before any person duly authorized, such oath or affirmation as may be prescribed by the Commander-in-Chief, which shall not be inconsistent with the oath and declaration prescribed by the laws of the United States.

Expiration of commissions of staff officers.

Section 28. The commissions of staff officers, appointed by a commanding officer, shall expire as soon as the successor of such commanding officer is commissioned and qualified.

Certain officers empowered to administer oaths.

Section 29. General, field and commissioned staff officers are hereby authorized and empowered to admin-

ister oaths and affirmations, in all matters appertaining to or concerning the National Guard service, but in no case shall they charge any fee or compensation therefor. Any person who shall falsely swear or affirm to any oath or affirmation so administered shall, upon trial and conviction, be deemed guilty of perjury and sentenced for such offense as is now prescribed by law.

Falsely swearing declared to be perjury.

Section 30. When a company is first enrolled, or from any cause is without officers, and an election of officers is ordered, if such company neglects or refuses to elect any officer, or if the persons elected shall not accept, the commander of the regiment or battalion to which it belongs shall detail some officer of the staff or line of the regiment to command said company until some officer is elected; such officer shall have the same power and be subjected to the same liabilities as if he were captain of such company.

Detail of commanding officers.

Power of officer so detailed.

Section 31. The Commander-in-Chief may discharge a commissioned officer:

When officers may be discharged by the Commander-in-Chief.

When such officer tenders his resignation;

When it appears to the Commander-in-Chief that he is unable or unfit to discharge the duties of his office, or to exercise proper authority over his inferior officers, or soldiers, or that he has been convicted of an infamous crime;

When either before or after receiving his commission, he has removed his residence out of the bounds of his command, to so great a distance that it is inconvenient to perform the duties of his office;

When he has been absent from his command more than three months without leave;

Upon address of both houses of the Legislature to the Governor;

Upon sentence of a court martial, after trial according to law;

Upon recommendation of the brigade board of examination, as prescribed by section thirty-two;

Upon disbandment of an organization, as prescribed by section thirty-five.

Section 32. Every brigade commander of the National Guard of Pennsylvania, or such of his regimental commanders, or such of them as he may select, shall

Brigade military board.

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§31. General Orders No. 10, A. G. O., dated May 16, 1888, Paragraph II, directs that:

"Applications for the discharge of any line officer under the provisions of section 31 of the Military Law, will hereafter be accompanied with evidence that "such officer has had previous notice of the application, and that he has been "furnished with a copy thereof, with the endorsement of the regimental commander."

§32. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"Every brigade commander of the National Guard of Pennsylvania, with his "regimental commanders, or such of them as he may select, shall constitute a "military board or commission, whose duty it shall be to examine the capacity, "qualifications and efficiency of every commissioned officer in his brigade, or who "may hereafter be elected; and upon report of said board, if adverse to said "officer and approved by the commander-in-chief, the commission of such officer

Duties.

constitute a military board or commission, whose duty it shall be to examine the capacity, qualifications and efficiency of every commissioned officer in his brigade, or who may hereafter be elected; and upon report of said board, if adverse to said officer and approved by the Commander-in-Chief, the commission of said officer shall be vacated or denied, and a new election ordered: Provided always, That if any officer shall refuse to report himself, when directed, before such board, the Commander-in-Chief may, upon report of such refusal, declare his commission vacated or refuse the same, and direct a new election; and in case any company shall neglect, within thirty days after the finding of such board, approved by the Commander-in-Chief, to elect a suitable officer, the Commander-in-Chief may assign a suitable officer to fill the vacancy in such organization, or disband the same, in his discretion.

When commissions may be vacated.

When Commander-in-Chief may fill vacancies or disband the organization.

Division military board.

When one or more companies, or battalions, shall report directly to the division commander, he shall constitute a military board or commission of not exceeding five officers, of which he may be one, whose duties and powers shall be, to all intents and purposes similar to those prescribed for the brigade board or commission, and any officer in commission, or hereafter to be elected, or appointed, in such companies or battalions, shall report to such board or commission for examination; and on failure so to report, or to pass such examination, the commission of such officers shall be vacated or denied, at the discretion of the Commander-in-Chief, and a new election, or appointment shall be ordered, or the said division commander may order such officer before the brigade board, with like effect as if he were in or attached to the brigade.

Duties and powers.

Term of commissioned officers.

Section 33. The term of every commissioned officer shall be for five years, unless his commission shall be otherwise lawfully determined and annulled. Every enlisted man shall serve for the period of three years, unless sooner discharged for disability, which incapacitates him to perform his duty, or for other sufficient cause.

Term of enlisted men.

"shall be vacated or denied, and a new election ordered: Provided always, "That if any officer shall refuse to report himself, when directed, before such "board, the commander-in-chief may, upon report of such refusal, declare his "commission vacated or refuse the same, and direct a new election; and in case "any company shall neglect, within thirty days after the finding of such board, "approved by the commander-in-chief, to elect a suitable officer, the commander-"in-chief may assign a suitable officer to fill the vacancy in such organization, "or disband the same, in his discretion."

§33. General Orders No. 10, A. G. O., dated May 16, 1888, Paragraph I, directs that:

"That portion of Section 33 of the Military Law which reads as follows: 'Every "'enlisted man shall serve for the period of three years, unless sooner discharged "'for disability which incapacitates him to perform his duty, or for other suffi-"'cient cause,' is construed to apply to all enlistments made previous to or since "the passage of the act of April 13, 1887. All enlisted men who have served three "years or more of their last five year enlistment, will be immediately discharged "by their company commanders, and if they re-enlist within thirty days there-"after, such re-enlistment will entitle them to the benefit of re-enlistment pay as "provided in Section 52 of said act."

Discharge of enlisted men.

Section 34. The company commander, upon the approval, may, and upon the order of his superior commanding officer, shall discharge any enlisted man of his company, and all commanding officers may discharge their non-commissioned staff officers; the certificate of discharge by such company or other commanding officer shall, in all cases, be good, sufficient and valid.

Certificate.

When companies may be disbanded.

Section 35. If it appears to the Commander-in-Chief that a company of the National Guard has failed to comply with the requirements of the law in matters of uniform, equipment and discipline, so that it is incapacitated to discharge the duties required of it, such company may be disbanded by the Commander-in-Chief.

Term of office of the Adjutant General.

Section 36. The Adjutant General shall hold his office for the term of four years, and until his successor is appointed and qualified, but he may be removed at any time by the Commander-in-Chief.

Duties of the Adjutant General.

Section 37. He shall distribute all orders from the Commander-in-Chief, shall obey all orders relative to carrying into execution and perfecting any system of military discipline established by law, shall be in attendance when the Commander-in-Chief reviews the National Guard, and perform such other military duties as the Commander-in-Chief shall direct.

To furnish blank forms, &c., to the National Guard.

And make and lay abstracts therefrom before the Commander-in-Chief annually.

Section 38. He shall furnish to the National Guard blank forms of rolls and of the different returns that may be required, and shall also make proper abstracts from the returns of the commanding officers of the brigades and divisions and lay the same before the Commander-in-Chief annually.

To make annual reports in duplicate.

Form.

One copy for the Commander-in-Chief and one for the President.

Section 39. He shall annually make a return, in duplicate, of the militia of the State, with their arms, accoutrements and ammunition, according to such forms as may be prescribed by the Secretary of War of the United States; one copy of which he shall deliver to the Commander-in-Chief and transmit the other to the President of the United States, on or before the first Monday in February.

Annual account to the Auditor General.

Section 40. He shall annually, in December, lay before the Auditor General an account, with vouchers, of his expenditures as Adjutant General.

Officers of the general staff, &c., may be ordered upon special duty.

Compensation under such orders.

Section 41. Officers of the general staff, or staff corp upon the respective staffs of the Commander-in-Chief, major general and the brigade commanders, may be ordered upon special duty, upon the discretion of the Commander-in-Chief, and shall receive the pay of their respective ranks during the time they may continue

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§34. General Orders No. 12, A. G. O., dated May 21, 1892, directed that "hereafter "summary discharges by authority of Section 34 of the Military Code shall be for "causes not subject to the jurisdiction of courts martial, as prescribed by law, "and shall be published in orders with the reasons therefor, and shall be "affirmatively designated as 'honorary' discharges." This order was rescinded by General Orders No. 15, A. G. O., dated August 13, 1894.

Adjutant General, custodian of military records.

upon duty under such order. The Adjutant General shall have the custody of all books, accounts and property of the State, and shall be required to give security,

Bond.

in the sum of twenty thousand dollars, for the faithful performance of his official duties.

Annual encampments.

Section 42. There shall be held, once in every year, an encampment of the National Guard, not to exceed fourteen days' duration, at such times and places as the Commander-in-Chief shall direct, and, during such encampment there shall be made, by the Adjutant General or inspector general, an inspection of the troops.

Transportation, subsistence and per diem pay.

For service during such encampment, the troops shall be entitled to the necessary transportation and subsistence and a per diem pay, as prescribed by section fifty-two, which shall be paid upon warrants of the Adjutant General approved by the military board. In addition

Special inspections.

to the inspection above provided for, such other inspections of the troops shall be made under the direction of the Adjutant General or inspector general as may be ordered by the Commander-in-Chief.

Pay, &c., of non-commissioned staff.

Section 43. The non-commissioned officers of the general division and several brigade, regimental and battalion staffs shall be entitled to the same pay, uniforms and equipments, or cost of uniforms and equipments, as are allowed first sergeants.

Transportation.

Section 44. Transportation will be furnished to officers of the National Guard for attendance upon court-martial, boards of examination and such other necessary service, as the law may require of said officers,

Expenses.

orders for which shall be made by the Commander-in-Chief, division or brigade commanders; and the necessary expenses, lawfully incurred, shall be audited and paid upon proper vouchers by the military board.

State appropriation.

Section 45. Each military company, duly organized and found by the military board, on examination of the rolls and reports returned by the inspecting officer, to be fully up to the standard of numbers, drill and discipline, shall receive, directly from the public treasury

How payable.

upon a warrant drawn by the Adjutant General to the order of the company commander, the sum of five hun-

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§42. Act of Assembly approved May 9, 1889. Original act of April 13, 1887, read as follows:

"There shall be held, once in every year, an encampment of the National Guard, "not to exceed fourteen days' duration, at such times and places as the com- "mander-in-chief shall direct, and, during such encampment, there shall be "made by the inspector general an inspection of the troops. For service during "such encampment, the troops shall be entitled to the necessary transportation "and subsistence and a per diem pay, as prescribed by section fifty-two, which "shall be paid upon warrants of the adjutant general, approved by the military "board. In addition to the inspection above provided for, such other inspections "of the troops shall be made, under the direction of the inspector general, as may "be ordered by the commander-in-chief."

§45. In addition to the annual State appropriation, companies of the National Guard of Pennsylvania located in cities of the first class may receive annually an appropriation of $500 from the councils of said cities under the act of Assembly approved May 24, 1887. Each company located in the city of Philadelphia has received under this act $500 annually from 1887 to the present year (1898).

dred dollars per annum, and each artillery and cavalry company, upon like condition, the sum of one thousand dollars per annum; but, it shall be the duty of the Adjutant General, before paying any of the said allowance in money, to purchase and issue to regimental and battalion quartermasters, or to commanders of unassigned companies, for each enlisted man, not already provided therewith, of said regiments, battalions and companies and the recruits thereof, a cap, blouse and trousers of the United States army fatigue pattern, and overcoat, blanket, knapsack or clothing bag, haversack and canteen, which shall be the regulation uniform of the National Guard, until the companies of the National Guard shall be fully armed and equipped for active service, and the cost of said clothing and equipments shall be deducted from the annual allowance of said companies, and the balance, if any, paid and disbursed as hereinbefore provided: Provided, That any regiment, battalion or unassigned company may provide itself with other uniforms of such style and pattern as a majority of its officers may select, which uniforms shall be the property of said regiment, battalion or companies, or the individuals thereof, but the State uniform must be worn at all inspections, provided by this act, and when the troops are called into actual service by the State.

Adjutant General to see that companies are properly uniformed before paying over the appropriation.

Regulation uniform.

Other uniforms may be provided.

But the State uniforms must be worn at all inspections, &c.

Section 46. In the above and in all other cases of military claims or bills adjusted by the State military board, payment shall be made in like manner; and the said board shall determine to whom a warrant shall issue for the amount found due, to be promptly accounted for by the person receiving the same, by sufficient vouchers to the Adjutant General.

Payment of military claims.

To be accounted for to the Adjutant General.

The following is a copy of the act:

"An act to authorize the councils of the cities of the first class of the Com-
"monwealth to appropriate annually a sum, not exceeding five hundred dollars,
"for the support and maintenance of each company of the National Guard using
"and occupying an armory, building, room or quarters within said city, in addi-
"tion to the annual appropriation by the Legislature.

"Section 1. Be it enacted, &c., That the councils of the cities of the first class
"of the Commonwealth be and they are hereby respectively authorized to ap-
"propriate, from any moneys in their respective treasuries not otherwise appro-
"priated, annually, a sum not exceeding five hundred dollars for the support and
"maintenance of each company of the National Guard using and occupying an
"armory, building, rooms or quarters within the limits of said city.

"Section 2. That any moneys so appropriated shall be paid by warrant of the
"controller of said cities, drawn to the order of the commanding officer of
"such company, only when it shall be certified to the said city controller, by the
"Adjutant General of the State, that the said company or companies have
"satisfactorily passed the annual inspection provided by law.

"Section 3. That the moneys, so appropriated, shall be used and expended solely
"and exclusively for the support and maintenance, discipline and training of the
"said company; and the commanding officer shall account, by proper vouchers
"to the said city controller each year, for the expenditure of the money so ap-
"propriated; and no appropriation shall be made for any subsequent year until
"the expenditure of the previous year be duly and satisfactorily accounted for.

"Section 4. That any commanding officer who shall embezzle, misappropriate
"or use any of said moneys hereby authorized to be appropriated, otherwise
"than is herein provided for, shall, upon conviction thereof, be sentenced to
"undergo an imprisonment not exceeding one year and pay a fine not exceeding
"five hundred dollars."—Approved May 24, 1887.

Adjutant General to lay annual inspection rolls before the State military board.

Section 47. The Adjutant General shall, on receipt of the annual inspection rolls, lay the same before the State military board, to be composed of the Auditor General, Adjutant General and State Treasurer, who

When board shall meet to audit and adjust claims.

shall meet on the first Monday of April and November, of each year, and at such other time as the Commander-in-Chief may direct, for the purpose of auditing and adjusting all military claims incident to the organization

Claims to be paid on approval by board.

and discipline of the National Guard, and which, on the approval of said board endorsed thereon, shall be paid as hereinafter provided.

Bills to be itemized and sworn to.

Section 48. No bill or allowance, authorized by the provisions of this act, shall be approved by the military board and paid by the State Treasurer, unless the said bill or allowance is itemized and its correctness duly sworn to or affirmed before an officer authorized by law to administer oaths or affirmations: Provided,

Appropriation under this act limited to $350,000 annually.

That the appropriation for the annual current expenses of the National Guard, under the provisions of this act, shall not exceed the sum of three hundred and fifty thousand dollars.

Appropriation for rent of armories.

Section 49. Each company of the National Guard, its vouchers therefor being duly passed and approved by the State Military Board, in addition to its appropriation under section forty-five, shall, if entitled thereto, receive a warrant from the Adjutant General to the order of its commanding officer drawn upon the State Treasurer for the sum of two hundred dollars, to be devoted and applied to the payment of armory rent only.

Additional appropriation to cavalry and batteries for horse hire.

Section 50. In addition to one thousand dollars appropriated to each troop of cavalry and each battery of artillery, properly manned, mounted and equipped, and obeying the requirements of the law, each battery of artillery shall receive two dollars per diem, per horse, for every horse necessary for horsing said battery for all parades and services authorized by the Adjutant General, and for like parades and services each troop of cavalry, upon like conditions, shall receive two dollars

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§48. Act of Assembly approved June 26, 1895. Original act of April 13, 1887, appropriated $300,000. Act of May 27, 1893, appropriated $320,000.

§49. Act of Assembly approved June 2, 1891. Original act of April 13, 1887, read as follows:

"Each company of the National Guard, its vouchers therefor being duly passed "and approved by the State military board, in addition to its appropriations "under section forty-five, shall, if entitled thereto, receive a warrant from the "adjutant general to the order of its commanding officer drawn upon the State "treasurer for the sum of one hundred dollars, if located or quartered outside the "cities, boroughs or towns with a population exceeding fifteen thousand inhabi-"tants, and, if in cities, boroughs or towns with a population of fifteen thousand, "or a greater number, then, for the sum of two hundred dollars, to be devoted "and applied to the payment of armory rent only."

§50. Act of Assembly approved May 9, 1889. Original act of April 13, 1887, read as follows:

"In addition to one thousand dollars appropriated to each battery, properly "manned and equipped and obeying the requirements of the law, it shall re-"ceive its actual expenses for horsing said battery for all parades and services "authorized by the adjutant general; the bills for the same, with the necessary "vouchers, approved by the proper brigade and division commander, shall be

per diem, for horse allowance, for each enlisted man present for duty with a horse on such occasions; and all mounted officers shall receive two dollars per diem, per horse, for all such horses as may be necessary for parades and services authorized by the Adjutant General. The bills for the same, with the necessary vouchers, approved by the proper brigade and division commanders, shall be forwarded to the military board, and when approved by them warrants shall be drawn by the Adjutant General, upon the State Treasurer, for the respective amounts, in favor of the commanding officers, respectively, of such troops and batteries, in the manner prescribed by law: Provided, however, That the number of such troops of cavalry and batteries of artillery shall not exceed, at any time, the quota allowed by the regulation of the United States Army to the infantry arm of the service.

Bills to be approved by military board.

Number of troops of cavalry and batteries fixed.

Section 51. The necessary expenses of general, division and each brigade, regimental and battalion headquarters, including clerk hire and other actual outlays, shall be paid by the Adjutant General, on the usual lawful vouchers to that effect duly sworn or affirmed to by the officer charged with the payment of such expenses; such expenses in no event to exceed seven hundred and fifty dollars per annum for the division, six hundred dollars for each brigade, four hundred dollars for each regiment, one hundred and fifty dollars for each battalion not a part of a regiment.

Headquarter expenses.

How to be paid.

Such expenses limited to a fixed sum.

Section 52. When the National Guard shall be in actual service its comssioned officers shall be paid the same as the officers of like grade in the regular army of the United States; its first sergeants three dollars per day, its sergeants two dollars per day, its corporals one dollar and seventy-five cents per day, its privates one dollar and fifty cents per day, musicians in the brigade band excepting the leader two dollars and fifty cents per day; and each enlisted man or musician in the

Pay of the Guard when in actual service.

"forwarded to the military board, when approved by them warrants shall be "drawn by the adjutant general upon the State Treasurer for the respective "amounts in favor of the commanding officers respectively of such batteries in "the manner prescribed by law: Provided however, That the number of such "batteries of artillery shall not exceed, at any time, the quota allowed by the "regulation of the United States army to the infantry arm of the service."

§51. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"The necessary expenses of general, division and each brigade, regimental and "battalion headquarters, including clerk hire and other actual outlays, shall be "paid by the adjutant general, on the usual lawful vouchers to that effect duly "sworn or affirmed to by the officer charged with the payment of such expenses; "such expenses in no event to exceed one thousand dollars per annum for the "division, five hundred dollars for each brigade, three hundred dollars for each "regiment and one hundred and fifty dollars for each battalion."

§52. Act of Assembly approved May 5, 1897. Original act of April 13, 1887, read as follows:

"When the National Guard shall be in actual service, its commissioned officers "shall be paid the same as the officers of like grade in the regular army of the "United States; its first sergeant three dollars per day, its sergeants two dol-"lars per day, its corporals one dollar and seventy-five cents per day, its musi-

Additional pay on re-enlistment.

How payments are to be made.

Expenses for subsistence, &c., how to be contracted and paid.

brigade band after having served a full term of enlistment shall be entitled to the additional pay of twenty-five cents per day for his service during his second and third terms of consecutive enlistment; and the said payments shall be made on the pay-rolls prepared in such form as the Adjutant General shall direct upon warrants drawn by the Governor upon the Treasurer of the Commonwealth out of any money in the Treasury not otherwise appropriated. And the necessary subsistence and quartermaster stores and transportation for the troops in actual service may be contracted for by the proper department officers by direction of the Commander-in-Chief and paid for in like manner.

"cians and privates one dollar and fifty cents per day; and each enlisted man, "after having served a full term of enlistment, shall be entitled to an additional "pay of twenty-five cents per day for service during his second term, and a fur- "ther addition of twenty-five cents per day for service during each subsequent "term of enlistment; and the said payments shall be made on the pay-rolls, "prepared in such form as the adjutant general shall direct, upon warrants "drawn by the Governor upon the Treasurer of the Commonwealth, out of any "money in the treasury not otherwise appropriated. And the necessary sub- "sistence and quartermaster stores, and transportation for troops in actual "service, may be contracted for by the proper department officers, by direction "of the commander-in-chief, and paid for in like manner."

General Orders No. 16, A. G. O., dated July 23, 1887, direct that:

"Under section 52 of the Military Code, act of April 13, 1887, all enlisted men in "service at the next encampment who shall be serving at that time in their "second, third or fourth term will be entitled to receive the extra pay of twenty- "five cents per day for each term of service they have then previously completed.

"In the preparation of muster and pay-rolls, under the column of when en- "listed, the date of the original enlistment will be entered; in the blank column "after the amount of pay column, at the heading thereof will be inserted the "words service allowance, and under that heading will be entered the amount of "service allowance claimed under the above section. The total amount due "column will contain not only the regular pay, but the additional service allow- "ance, the total figures being given. Under the column of remarks will be "entered opposite the name of each man serving a re-enlistment the words second "enlistment, third enlistment and so on, as the case may be.

"In the preparation of the inspection roll, under the heading, date of enlist- "ment, the date of the original enlistment will be given, and in the column of "remarks, the words second enlistment, third enlistment and so on, as the case may be.

"Continuous service is required in order to entitle the soldier to the service "allowance."

Section 52 amended by act of Assembly approved July 5, 1895, which read as follows:

"When the National Guard shall be in actual service its commissioned officers "shall be paid the same as the officers of like grade in the regular army of the "United States; its first sergeants three dollars per day, its sergeants two dol- "lars per day, its corporals one dollar and seventy-five cents per day, its privates "one dollar and fifty cents per day, musicians in the brigade band, excepting the "leader, two dollars and fifty cents per day, and each enlisted man or musician "in the brigade band, after having served a full term of enlistment shall be en- "titled to the additional pay of twenty-five cents per day for services during "his second term, and a further addition of twenty-five cents per day for services "during each subsequent terms of enlistment, and the said payment shall be "made on the pay-rolls prepared in such form as the Adjutant General shall "direct, upon warrants drawn by the Governor on the Treasurer of the Com- "monwealth, out of any money in the Treasury, not otherwise appropriated. "And the necessary subsistence and quartermaster stores, and the transportation "for the troops in actual service may be contracted for by the proper depart- "ment officers, by the direction of the commander-in-chief, and paid for in like "manner."

Enlisted men re-entering the service within thirty days from expiration of previous term of enlistment will be credited with continuous service.—Adjutant General Thomas J. Stewart, 1897.

§52. Officers' Service Pay.

"Does section 52 of the Code, which enacts that commissioned officers shall " 'be paid the same as the officers of like grade in the regular army,' give to "officers commissioned for a second or third term, ten per centum of their

Embezzling or misapplying of moneys received for disbursement declared to be a felony.

Duty of district attorney on complaint being made.

Section 53. Any member of the National Guard who shall embezzle, misapply or retain in his possession, without authority, any moneys received by him for disbursement, shall be guilty of a felony; and it shall be the duty of the district attorney of the proper county, on complaint being made, to prosecute such offender in any court of competent jurisdiction, and to collect any penalty imposed, and pay the same into the State Treasury.

Relief in case of injury or death.

Section 54. If any officer or soldier is wounded, or otherwise disabled, or is killed, or dies of wounds received while doing duty in actual service, he, his widow, or children, shall receive from the Commonwealth just and reasonable relief.

Ammunition and conveniences for rifle practice.

Section 55. The adjutant General shall provide for and issue to the National Guard, for rifle and artillery practice, such ammunition as may be necessary for the efficiency of the service, and he shall provide fully such conveniences of rifle practice for the National Guard as shall be prescribed by the Commander-in-Chief, to be paid by warrants drawn by the Adjutant General, approved by the military board.

Retired officers.

Section 56. All commissioned officers, who shall have held continuous rank for a period of ten years, or who shall have served fifteen years therein since the year one thousand eight hundred and sixty-one, may, upon their honorable retirement from service, be carried

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"current yearly pay for each term of five years of service as provided in Revised "Statutes of the United States, section 1262? I am of the opinion that the United "States army regulation, allowing certain commissioned officers 'ten per centum "of their current yearly pay for each term of five years of service,' has no appli- "cation to the pay of officers of our National Guard.

"A comparison of our military Code with the army regulations, reveals no "similarity, either in letter or spirit, between the two texts. The Code is meant "to govern the uniformed militia of the Commonwealth, while performing tem- "porary military duties and does not presuppose continuous service. Compen- "sation for such service is specifically prescribed as 'per diem pay.' Section 52 of "the Code does not apply to the annual encampments, but to 'actual service,' "which, by no possible interpretation, could contemplate a term of five years. "The language of the section, that officers of the National Guard, while 'in actual " 'service, shall be paid the same as officers of like grade in the regular army of " 'the United States,' means, therefore, at the 'same' rates or 'same' proportion, as "the regular army officers would receive for similar days of service. 'Service pay' "is an entirely different character of compensation from 'yearly pay,' and is al- "ways differently designated.

"The framers of our Code, in section 52, recognized this distinction by expressly "giving 'service pay' to enlisted men for service during second or subsequent "terms of enlistment, while its silence as to any extra pay of re-commissioned "officers, under the well-known rule of interpretation, certainly excludes the "latter from its benefits. The pay for the instruction service of an annual en- "campment, however, is provided for only in section 42 of our Code, and is ex- "pressly limited to a per diem pay, as prescribed in section 52 for active service. "The extra pay allowed by the United States army regulations is predicated and "calculated on 'current yearly pay,' and cannot, without new statutory authority, "be allowed commissioned officers of the National Guard of Pennsylvania, in ad- "dition to their present per diem compensation."—Judge Advocate General, N. G. P., Nov. 30, 1890.

§56. Act of Assembly approved April 14, 1897. Original act of April 13, 1887, read as follows:

"All commissioned officers, who shall have held continuous rank for a period of "ten years, may, upon their honorable retirement from service, be carried upon "a roll to be established and maintained in the adjutant general's office, which "roll shall be designated The roll of retired officers, and shall be entitled to wear "on State occasions, the uniform of the highest rank, which they may have held."

upon a roll to be established and maintained in the Adjutant General's office, to be known and designated as "The roll of retired officers," and shall be entitled to wear, on State occasions, the uniform of the highest rank they may have held: Provided, however, That service in the army, navy or marine corps of the United States during the war of the rebellion shall be computed as of twice its actual length, and as so computed shall be included as its proportion of said fifteen years.

Uniform.

Brevet second lieutenants.

Qualifications.

Physical ability.

Application for commission.

Residence.

Section 57. That every graduate of a college in the State of Pennsylvania, in which military instruction is regularly given by an officer of the United States army detailed for that purpose, who shall have received military instruction and training during the full course of four years, and shall have served as a captain of infantry therein not less than six months, shall be entitled to a commission as brevet second lieutenant in the National Guard of this Commonwealth, subject to such examination respecting physical ability as the Governor may, from time to time, prescribe: Provided, That application for such commission be made within one year after graduation from such college, and that such applicant be at the time a citizen of the Commonwealth of Pennsylvania.

Section 58. The annual appropriations, received by

Section 56 amended by act of Assembly approved June 2, 1891, which read as follows:

"All commissioned officers, who shall have held continuous rank for a period of "ten years, or who shall have served fifteen years therein, since the year one "thousand eight hundred and sixty-one, may, upon their honorable retirement "from service, be carried upon the roll to be established and maintained in the "Adjutant General's office, The roll of retired officers, and shall be entitled to "wear, on State occasions, the uniform of the highest rank which they may "have held."

Opinion rendered Oct. 3, 1895, by Hon. Henry McCormick, Attorney General of Pennsylvania, as to the retrospective application of Section 56:

"In answer to your (Adjutant General) request of recent date, asking for an "opinion upon the application made by General H. S. Huidekoper, under the "provisions of the 56th section of the act approved tne 13th day of April, A. D. "1887 (P. L. 23), to be placed on The Roll of Retired Officers, I have the honor "to submit the following:

"Under the provisions of the act above referred to all commissioned officers, "who shall have held continuous rank for a period of ten years in the National "Guard, may, upon honorable retirement from service, be carried upon 'the roll " 'of retired officers,' and shall be entitled to wear on State occasions the uniform "of the highest rank which they may have held while in service. This act was "approved the 13th day of April, 1887, and went into effect immediately.

"From the facts in the case it appears that General Huidekoper was in the "continuous service of the National Guard of Pennsylvania from the 17th day of "September, 1870, until the 18th day of July, 1881, having been twice commis-"sioned major general and twice brigadier general. His application now raises "the legal question whether the provisions of the act of 1887 are retrospective as "well as prospective. It seems to me that it was the intention of this provision "of the law to honor those officers who had already served continuously for a "period of ten years as well as those who might thereafter continue in the ser-"vice for the same period. This provision of the act should be construed in "such a way as to promote the best interests of the National Guard and properly "honor those who have given it continuous and faithful service for the period "therein designated.

"I am of the opinion, therefore, that the application of General Huidekoper "to be placed upon The Roll of Retired Officers should be recognized and his name "placed thereon as requested."

§58. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"The annual appropriations, received by the several infantry, cavalry and

the several infantry, cavalry, artillery, engineer and signal corps companies of the Commonwealth shall be used and expended solely for military purposes and for the use and benefit of the said several organizations.

Annual appropriation to be used solely for military purposes.

Section 59. The commanding officer of each infantry, cavalry, artillery, engineer and signal corps companies shall, at each and every annual inspection, return to the Adjutant General an itemized account and statement of all disbursements of the money appropriated during the preceding year to said company, which account and statement shall be verified by the proper vouchers for such disbursements.

Company commanders to render annually, after each inspection, an itemized statement of yearly expenses of the company.

Vouchers to be submitted.

Section 60. In every case in which any part of the annual appropriation to the several infantry, cavalry, artillery, engineer and signal corps companies of this Commonwealth shall be used in the purchase, erection or construction of any company armory, the title of the same shall be taken in the name of the State military board, for the use of the Commonwealth of Pennsylvania; and such armory, when so erected, shall be occupied solely for the use and benefit of the said company: Provided, That it shall not be lawful for any company to purchase, erect or construct any company armory with the funds so appropriated, either in whole, or in part, until after such company shall have received the consent and approval of its respective regimental and brigade commanders: And provided further, That when any such company armory, shall in the judgment and discretion of the Commander-in-Chief, become unnecessary for use as such, he shall cause the same to be sold by the State military board to the highest and best

Title of armories purchased or erected out of moneys appropriated by the State shall be in name of the State military board.

And used solely for company purposes.

Not to be purchased nor erected without the consent of regimental and brigade commanders.

When unnecessary, to be sold by State military board.

Their deed to divest all title of the Commonwealth.

"artillery companies of the Commonwealth, shall be used and expended solely "for military purposes and for the use and benefit of the said several organi-"zations."

§59. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"The commanding officer of each infantry, cavalry and artillery company shall, "at each and every annual inspection, return to the adjutant general an itemized "account and statement of all disbursements of the money appropriated during "the preceding year to said company, which account and statement shall be "verified by the oath or affirmation of such commanding officer, and shall be ac-"companied by the proper vouchers for such disbursements."

General Orders No. 9, A. G. O., dated April 14, 1887, direct that "In order that "there may be uniformity in the vouchers presented, the following are an-"nounced as proper subjects for the disbursement of the State funds and "vouchers for such disbursements will be considered: Additional rent for "armories, with consent of regimental and brigade commander; expenses of "keeping up the State uniform, but flannel and kersey will be drawn from the "State; purchase of an armory, or land on which to erect an armory, with con-"sent of regimental and brigade commander, the title to which shall be taken "in the name of the State Military Board; light, fuel, janitor, armorer, taxes, "insurance, stationery, postage, freight or express charges necessary during the "year for the company, and other expenses of like character."

§60. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"In every case in which any part of the annual appropriation to the several "infantry, cavalry and artillery companies of this Commonwealth shall be used "in the purchase, erection or construction of any company armory, the title of "the same shall be taken in the name of the State military board, for the use of "the Commonwealth of Pennsylvania; and such armory, when so erected, shall "be occupied solely for the use and benefit of the said company: Provided, That "it shall not be lawful for any company to purchase, erect or construct any "company armory with the funds so appropriated, either in whole, or in part,

bidder, and the deed of the said State military shall divest all title and interest of the Commonwealth, and the money so realized from such sale or sales shall be returned to the State Treasury.

Purchase money to be returned to the State Treasury.

Adjutant Gen ral to purchase books of tactics, &c., and supply all officers therewith.

Section 61. The Adjutant General shall purchase, at the expense of the Commonwealth, under the direction of the military board, to be paid for out of moneys in the Treasury not otherwise appropriated, and supply to all officers of the National Guard, copies of tactics prescribed for the use of the United States army, manual of rifle practice, and such manuals of service, and such other forms and books and papers of record, as the Commander-in-Chief may designate, together with copies of this act, and all subsequent laws of the Commonwealth relating to the National Guard; said laws to be collected, from time to time, and codified by the Adjutant General, published by the State Printer, and known as "the military code of Pennsylvania."

Copy of National Guard laws to be furnished.

Laws to be codified, and printed —and designated as "The Military Code of Pa."

Commanding officers authorized to impose penalties for disobedience of orders, &c.

Section 62. The commanding officer of any troops under arms may cause them to perform any military duty he shall require, and also to put under guard any officer, non-commissioned officer, musician or private, who shall disobey the orders of his superior officer, also all other persons who shall trespass on parade or camp grounds, or in any way or manner interrupt or molest the orderly discharge of duty of those under arms; and also may prohibit and prevent the sale of spirituous liquors, (except by licensed houses,) within one mile of

Arrest interlopers, &c.

Prohibit the sale of spirituous liquors.

"until after such company shall have received the consent and approval of its "respective regimental and brigade commanders: And provided further, That "when any such company armory shall, in the judgment and discretion of the "commander-in-chief, become unnecessary for use as such, he shall cause the "same to be sold by the State military board to the highest and best bidder, and "the deed of the said State military board shall divest all title and interest of "the Commonwealth, and the money so realized from such sales shall be returned "to the State Treasury."

§62. "An arrest in our National Guard service may be defined to be the act or "order of a superior officer suspending a subordinate from the performance of "military duty, pending his trial on formal charges and specifications. While "in uniform at camp, in armory or on parade, as in the United States army, the "order, in the case of an officer, would notify him that he was under arrest, and "should remain at his quarters appearing without arms, but in the case of an "enlisted man, the order would be for a detail to conduct him to the guard house.

"Section 62 of our Code prescribes that officers and men who disobey orders "while under arms—and all breaches of discipline are presumed to be disobe-"dience of orders—shall be 'put under guard.' All liberties and freedom of move-"ment, however, taken by officers or enlisted men, while under arrest, are im-"pliedly by permission of the commanding officer and do not rebut the pre-"sumption that they are still 'under guard.' But as members of the National "Guard of Pennsylvania—both officers and enlisted men—are in uniform during "only a small proportion of the year, the greater part of their time being de-"voted to the avocations and industries of peace, arrests during the latter period "may be regarded as mere notices in the form of official orders, that charges "have been or are to be filed and that those arrested are suspended from all "military duties, until said charges are withdrawn or a court ordered within "the prescribed period of thirty days to investigate them."

"Section 106 of the Code prescribes such suspension in the case of officers, and "as enlisted men under section 89 of the Code are now treated with the same "consideration as officers, so far as the trials of military offenses are concerned, "the same consequences are presumably entailed. Of course, no actual confine-"ment or placing under guard occurs after the arrest, while the accused is at-"tending to his civil duties, but when the court martial is convened to try the "case, if the accused then disobeys the summons of the court, a warrant issued

such parade or encampment; and, also, in his discretion all hucksters or auction sales or gambling may be abated as a nuisance.

And abate nuisances.

Section 63. There shall be enlisted and attached to each brigade a military band of not less than twenty nor more than thirty-five musicians, who shall be entitled to the pay, clothing and allowance prescribed by law for musicians; and, in addition thereto, said band shall be entitled to receive from the State an annual appropriation, and an amount for armory rent equal to the amount given to a company of infantry, to be paid by warrant drawn in favor of the brigade quartermaster. The leader of said band shall be entitled to the rank, pay and allowance of a first lieutenant, the said band shall be subject to the orders of the commander of said brigade who may discharge and recruit said band at his discretion; the duties of said band shall be to furnish music for the troops at the regular parades required by law and upon such other military occasions as the commander may direct.

Military bands to be attached to each brigade.

Pay, clothing, &c.

State appropriation and rent.

Rank and pay of leader.

To be under orders of brigade commander.

Duties of bands.

Section 64. The publication, according to military usage, of the written or printed orders from or through regiment, or battalion headquarters, by the company commander, or prescribed in the by-laws, announcing the duty to be performed, shall be sufficient warning to the officer or soldier directed to perform such duty.

Publication of orders.

Section 65. Military duty shall require the attendance of commissioned officers, non-commissioned officers, musicians and privates on all occasions of drills, parades and encampments, and active service ordered by the commanding officer of the company, regiment, battalion, brigade, division, or the Commander-in-Chief, or provided for by the company by-laws, unless excused therefrom by the officers having authority to grant such excuses; and that, while on such duty, or going to and returning from the same, obedience shall be rendered to all rules, regulations, usages, customs and requirements of the army of the United States and of the code and regulations of the State of Pennsylvania.

Attendance on drills, parades, &c., required.

Obedience to rules, &c.

"by the latter causes his arrest, and his transfer to the custody of the sheriff or "of a constable of the county. This form of arrest by the aid of the civil autho- "rities is peculiar to our Code and therefore an unique and exclusively Penn- "sylvania procedure."—Judge Advocate General, N. G. P., Nov. 30, 1890.

§63. Act of Assembly approved July 5, 1897. Original act of April 13, 1887, read as follows:

"There shall be enlisted, and attached to each brigade, a military band of not "less than twenty, nor more than thirty musicians, who shall be entitled to the "pay, clothing and allowance prescribed by law for musicians; and, in addition "thereto, said band shall be entitled to receive from the State an annual appro- "priation and an amount, for armory rent, equal to one-half the amount given to "a company of infantry, to be paid by warrant drawn in favor of the brigade "quartermaster. The leader of said band shall be entitled to the rank, pay and "allowance of a sergeant major. The said band shall be subject to the orders of "the commander of said brigade, who may discharge and recruit said band at "his discretion. The duties of said bands shall be to furnish music for the troops "at the regular parades required by law, and upon such other military occasions "as the brigade commander shall direct."

Company by-laws, rules and regulations.

Section 66. Every uniformed company of the National Guard may form by-laws, rules and regulations, with the approval of the major general, not inconsistent with the laws of this State, for the government and improvement of its members in military science and discipline; and, when approved by two-thirds of all the members belonging to any such company and the major general, such by-laws, rules and regulations shall be binding, but the same may, upon like approval, be altered, from time to time, as may become necessary.

When effective.

Alterations.

When National Guard, or enrolled militia, may be called out.

Section 67. When an invasion of, or insurrection in, the State is made or threatened, or a tumult, riot or mob shall exist, the Commander-in-Chief shall call upon the National Guard, and, at his discretion, upon the enrolled militia, to repel or suppress the same, and may order out divisions, brigades, regiments, battalions or companies, or may order to be detached parts or companies thereof, or any number of men to be drafted therefrom, and may cause officers to be detailed, sufficient with those attached to the troops, to organize the forces.

Uniforms, arms, &c., exempt from levy and sale.

Section 68. Every officer and soldier shall hold his uniform, arms, ammunition and accoutrements required by law free from all suits, distresses, executions or sales for debt, or payment of taxes.

Camp equipage to be furnished by the Adjutant General.

Section 69. The Adjutant General may deliver, as a loan from the State, to the commanding officer of each division, brigade, regiment, battalion or company of the National Guard, such tents, fixtures and other camp equipage as may be in the State Arsenals; and each officer, to whom such equipage is delivered, shall be responsible for the safe keeping of the same; and, in case of the discharge or death of such officer, he or his legal representative shall be released from such responsibility, upon filing in the office of the Adjutant General a certificate of the officer succeeding him in command, that the articles so furnished are at the date of the certificate in good order and condition, reasonable use and wear thereof excepted.

Responsibility therefor.

Release from said responsibility.

Distribution of arms, &c., by the Adjutant General.

Section 70. The Adjutant General may, under the direction of the Commander-in-Chief, make such disposition of the arms, accoutrements, ammunition and all other military property belonging to the Commonwealth, as will most effectually subserve its military interests or necessities. He shall distribute to the officers, regiments, battalions and companies of the National Guard, the arms, furniture, equipments, camp

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§70. General Orders No. 17, A. G. O., dated July 12, 1888, direct that "I. Whenever State property is destroyed, lost or damaged by any cause, other than the "usual wear and tear of the service, the responsible officer will at once communicate with the Adjutant General, stating the amount of the several articles "destroyed or damaged, and request that a board of survey be appointed to "fix the responsibility for such damage or loss.

"II. The record of proceedings of boards of survey will hereafter be made in "triplicate, and, following the form of a court martial proceeding, will state

equipage and books, required by law to be furnished at public expense; and may sue, either in contract or tort, any or all such officers, for loss or damage sustained in articles so furnished by them. He may permit the field pieces and artillery equipments now in the possession of any city or county so to remain, so long as they provide suitable places of deposit therefor, and keep them in good condition, without expense to the Commonwealth.

Suit may be brought by him for loss or damage to the same.

Field pieces and artillery equipments.

Section 71. Each company of artillery may be provided, by the Adjutant General, with the battery of manœuvre, prescribed for that arm by the War Department of the United States, with caissons, harness, implements, laboratory and ordnance stores, in possession of the State, which may, from time to time, be necessary for their complete equipment for the field; and when a state of war, or danger thereof, renders target practice expedient, in the opinion of the Commander-in-Chief, such quantity of ammunition, annually, as he deems necessary to be expended in experimental gunnery; the commanding officer of each company shall be accountable for the preservation of the pieces, apparatus and ammunition aforesaid, and for the proper expenditure of the ammunition.

Artillery companies to be provided with batteries, &c.

Target practice.

Commanding officers to be responsible for the batteries, &c.

Section 72. The commanding officer of such company, when it is ordered by the Commander-in-Chief to march out of the city or county where the gun-house is situated, and on occasions of parade, when ordered by the Commander-in-Chief for experimental gunnery or camp duty, may provide horses to draw the field pieces and caissons, and present his account of the expenses thereof.

Horses for artillery.

Section 73. The Adjutant General may, with the approval of the Commander-in-Chief, sell or exchange, from time to time, such military stores belonging to the quartermaster general's department, as are found unserviceable or in state of decay, or which it may be deemed for the interest of the State to sell or exchange.

Sale or exchange of military stores.

Section 74. The Commander-in-Chief is hereby authorized to procure and issue, from time to time, to the National Guard, such flags, standards and guidons as may be necessary, which, as far as practicable, shall be similar in style to those presented by the State to the Pennsylvania regiments of the late war, and which shall be paid for, on the warrant of the Governor, out of any moneys in the treasury not otherwise appropriated.

Flags and standards.

Style.

How to be paid for.

Section 75. Every arm, uniform or equipment issued by the State shall be used only in the discharge of mili-

Use of arms and equipments.

"specifically the findings, the opinion and the recommendations in each case. "The record will be signed by all the members, and forwarded through regular "channels to the Adjutant General for his action."

§75. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"Every arm, uniform and equipment issued by the State, shall be used only in

Penalty for damaging or selling the same.

tary duty; and any non-commissioned officer or private, who shall wilfully or wantonly injure or destroy any uniform, arm or equipment, or other military property belonging to the State, or to the regiment, battalion or company, or refuse to make good such injury or loss, or who shall sell, dispose of, secrete or remove the same, with intent to sell or dispose thereof, or who shall fail, within ten days after being notified, to return the same to the State or his commanding officer, shall be tried by court-martial, and sentenced to pay a fine of not more than one hundred dollars, or in default of payment of same, undergo an imprisonment in the county jail of not more than thirty days, and all clothing, camp and garrison equipage, ordnance, ordnance stores and quartermaster stores, issued by the State, or fabricated from material issued by the State, and charged against the company allowance, or for which commutation has been paid, shall be the property of the State of Pennsylvania.

Trial by general court-martial.

Stores issued or fabricated to be the property of the State.

Purchasing military stores deemed a misdemeanor.

Section 76. If any person shall, knowingly and wilfully, purchase or receive in pawn or pledge any arm, accoutrement, article of military clothing, equipment, tent or fly, or any quartermaster or ordnance stores, the property of the State of Pennsylvania, he shall be guilty of a misdemeanor, and, being convicted thereof in any court of quarter sessions of the proper county, shall be sentenced to an imprisonment, not exceeding one year and a fine not exceeding three hundred dollars.

Punishment.

Additional exemptions from military duty.

Section 77. In addition to exemptions now allowed by law, any person who shall have performed duty in any military organization of the National Guard of the State, for the space of five years, or who enlisted for one, two and three years, or for nine months in active service of the United States, and was honorably discharged, shall be exempt from further military service, except in case of war, invasion or insurrection; and from serving as a juror if he so desires.

And from serving as a juror.

When courts of inquiry may be instituted.

Section 78. Courts of inquiry may be instituted by the Commander-in-Chief, or the commanding officer of the division, in relation to those officers for whose trial they are authorized to appoint court-martial, for the purpose of investigating the conduct of any officer,

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"the discharge of military duty; and any non-commissioned officer or private, "who shall wilfully or wantonly injure or destroy any uniform, arm or equip- "ment, or other military property belonging to the State, or to the regiment, "battalion or company, and refuse to make good such injury or loss, or who shall "sell, dispose of, secrete or remove the same, with intent to sell or dispose there- "of, or who shall fail, within sixty days after being notified, to return the same "to the State or his commanding officer, shall be tried by general court-martial, "and sentenced to pay a fine of not more than one hundred dollars, or, in default "of payment of same, undergo an imprisonment in the county jail of not more "than thirty days, and all clothing, camp and garrison equipage, ordnance, "ordnance stores and quartermaster stores, issued by the State, or fabricated "from material issued by the State, and charged against the company allowance, "or for which commutation has been paid, shall be the property of the State "of Pennsylvania."

either by his own solicitation, or on a complaint, or charge of improper conduct degrading the character of an officer, or for the purpose of settling rank; but no court shall consist of more than one officer, who may, if approved of by the officer ordering the court, require a judge advocate to attend such court in taking testimony, and in investigating any complaint that may come before such court.

How composed.

Section 79. Such court shall, without delay, report a statement of facts, and, when required, an opinion thereon, to the officer instituting such court, who may, in his discretion, thereupon appoint a court-martial for the trial of the officer whose conduct shall have been inquired into.

Statement of facts and opinion thereon to be reported.

When a court-martial may be appointed.

Section 80. Every court-martial for the trial of general officers and officers on the staff of the Commander-in-Chief shall be ordered by the Commander-in-Chief, and shall consist of seven officers, any five of whom shall constitute a quorum.

Courts-martial for the trial of general officers, &c.

Quorum.

Section 81. General courts-martial for the trial of all other commissioned officers shall be ordered by the division commander, and shall consist of five officers, any three of whom shall constitute a quorum.

General courts-martial for the trial of all other commissioned officers.

Quorum.

Section 82. General courts-martial for the trial of enlisted men of companies and battalions which report directly to the division commander, shall be ordered by him, and for the trial of enlisted men of the brigade, shall be ordered by the brigade commander, and shall consist of five officers, any three of whom shall constitute a quorum.

For the trial of an enlisted man.

Quorum.

Section 83. A regimental or battalion court-martial for the trial of enlisted men belonging to any regiment or unassigned battalion shall be ordered by the regimental or battalion commander, and shall consist of a field officer or captain in such regiment or battalion.

Regimental or battalion court-martial.

Section 84. An unassigned company court-martial for the trial of enlisted men belonging to unassigned companies of infantry, troops of cavalry or batteries of artillery, shall be ordered by the brigade commander, and shall consist of one officer of the rank of a field officer or captain.

Unassigned company court-martial.

Section 85. The officer ordering each court may, at any time, supply a vacancy that from any cause may happen therein, but the member filling such vacancy shall not sit or participate in the trial of a case commenced before he has qualified.

Vacancies, how supplied.

Section 86. The jurisdiction of general courts-martial shall extend to and include the trial of all offences against military law, order or discipline. Their sen-

Jurisdiction of general courts-martial.

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§82. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"General courts-martial for the trial of enlisted men shall be ordered by the "brigade commander, and shall consist of five officers, any three of whom shall "constitute a quorum."

Sentences.

tences may inflict one or more of the following punishments, namely: reprimand, forfeiture in whole or part of pay and allowances, a fine not exceeding one hundred dollars, or, in default of payment of the same for twenty days after final approval, imprisonment not exceeding thirty days, suspension of officers from rank, dishonorable discharge from the service, and, in the case of non-commissioned officers, their reduction to the ranks.

Jurisdiction of regimental, battalion and unassigned company courts-martial.

Section 87. The jurisdiction of regimental, battalion and unassigned company court-martial shall extend to and include the trial of all infractions of duly approved company by-laws, and to non-attendance at drills, abuse or neglect of arms and clothing, and such other minor offenses against military discipline. Their sentences may inflict one or more of the following punishments, to wit: reprimand, forfeiture in whole or part of pay and allowances, and a fine not exceeding twenty dollars, or, in default of payment of the same for twenty days after a final approval, imprisonment not exceeding five days.

Sentences.

Jurisdiction and procedure of all courts-martial in times of war, insurrection, &c.

Section 88. The jurisdiction and procedure of all courts-martial in times of war, insurrection, invasion, rebellion or riot, and when the National Guard shall be called into the service of the United States, shall be extended to the trial of all offenses, with similar punishments, as are then prescribed for like courts in the army of the United States.

Court-martial must be held within thirty days after arrest.

Section 89. No officer, or enlisted man, under arrest, shall be brought to trial, unless the officer convening the court-martial shall have ordered the same within thirty days after such arrest; nor until ten days after a copy of the order convening the court and of the charges and specifications shall have been delivered to the accused, or left at his usual or last known place of abode.

Accused to be furnished with copy of order, charges and specifications.

A judge advocate must be present at every court-martial.

Section 90. There shall be a judge advocate, commissioned or specially detailed, for every court-martial, who shall, after all challenges, if any, shall have been determined, administer to each member, if a general court, or to the officers constituting a regimental, battalion or unassigned company court, the following oath (or affirmation):

Oath of members.

"You, —— swear (or affirm) that you will well and truly try and determine, according to the evidence, all matters and issues between the Commonwealth of Pennsylvania and any person or persons who shall come before this court-martial, and that you will not divulge the findings or sentence of the court to any but the proper authority, until it shall be duly disclosed by the same."

Additional oath in general courts.

And in general courts, there shall be added the following: "And that you will not disclose, or discover the vote, or opinion, of any particular member of the

court, unless required to give evidence thereof as a witness by a court of justice in due course of law."

Judge advocate to be sworn.

Section 91. When all the members of a general court, or the officer of a regimental, battalion or unassigned company court, shall have been duly sworn (or affirmed), the president of the former, or officer of the latter, shall administer to the judge advocate the following oath (or affirmation):

Oath.

"You, —— do swear (or affirm) that you will not divulge the finding or sentence of the court to any but the proper authority, until it shall be duly disclosed by the same."

Additional oath in general courts.

And in general courts, there shall be added the following: "And that you will not disclose, or discover the vote, or opinion, of any particular member of the court, unless required to give evidence thereof as a witness by a court of justice in due course of law."

Approval of proceedings and sentence.

Section 92. The proceedings and sentence of every court-martial shall, without delay, be delivered to the officer ordering the court, who shall approve or disapprove thereof, within fifteen days thereafter, and shall give notice of his approval or disapproval to the president or officer of such court-martial, to the arresting officer and to the accused; and he may, at his discretion, publish the sentence as approved or disapproved in orders; but no part of such sentence shall be published or executed, until after the time allowed for appeals has expired; and he shall also transmit such proceedings and sentences, and his approval or disapproval thereof, to the Adjutant General for such disposition as may be deemed proper.

Publication of sentence.

When to be executed.

Proceedings, &c., to be transmitted to the Adjutant General.

Right of appeal from general courts-martial to the Commander-in-Chief.

Section 93. An appeal from the approved finding or sentence of a general court-martial may be made to the Commander-in-Chief, within twenty days, after the decision, appealed from, shall have been made known to the person appealing, and shall operate as a stay of execution of sentence until the dismissal of such appeal.

Stay of execution of sentence.

Right of appeal from other courts-martial to the officer ordering it.

Section 94. An appeal from the approved finding and sentence of a regimental, battalion or unassigned company court-martial may be made to the officer ordering said court, or to his successor in command, within twenty days, after the decision, appealed from, shall have been made known to the person appealing, and said officer may remit, mitigate or commute said sentence.

Collection of fines imposed by courts-martial.

Section 95. The president of such court-martial, or the officer of a regimental, battalion or unassigned company court-martial, shall issue his warrant, for the collection of all fines imposed by said court-martial, to the sheriff, or any constable, of the county in which the court was held, or in which the delinquent resides, whose duty it shall be to collect all fines provided for by this act, in the same manner as he is authorized to collect debts on civil process, and make his return to the

president of the said court, or to the officer of the said regimental, battalion or unassigned company court-martial, or, within twenty days, certify to the said president or officer that there is no property of the defendant, out of which said moneys can be made. Upon such return of "no goods," the said president or officer of the court shall issue his warrant of commitment of such delinquent to the proper jail of the county, directed to such sheriff or constable, who shall forthwith execute said warrant, and make proper return of the same to said court.

In default of payment, warrant of commitment to issue.

Section 96. The keepers and wardens of all county jails are required to receive and confine all military offenders, when delivered, by such sheriff or constable, under the proper certificate of commitment of a general or regimental, battalion or unassigned company court-martial, for and during the term of sentence as set forth in said commitment.

Keepers of jails to receive and confine all military offenders.

Section 97. The senior officer present shall be the president of the court; and all the members of such court shall, when on duty, be in uniform; and the president or officer of the court may appoint, by warrant, one or more marshals, whose duty it shall be to summon all delinquents and parties accused, and subpoena all witnesses to appear before the court at the properly designated time and place.

Senior officer to be the president of the court, whose members shall be in uniform.

Marshals may be appointed, and their duties.

Section 98. After return of a summons by a marshal, certifying service of the same on the accused, and upon default of appearance of such accused, at the time and place designated for trial, the president or officer of the court shall issue his warrant, for the arrest of the deliquent, directed to the sheriff or to a constable of the county, who shall forthwith execute said warrant, and make proper return thereof to said court, and produce to the said court the body of the accused, if within said county, and retain the custody thereof, until the conclusion of the trial, unless sooner discharged by order of the court.

Proceedings after return of summons and upon default of appearance.

Section 99. The president, or officer of every court-martial, and every court of inquiry, both before and after he has been sworn, shall issue subpoenas for all witnesses, whose attendance at such court may, in his opinion, be necessary in behalf of the Commonwealth, and also, on application, for all witnesses in behalf of the accused, or person returned as delinquent.

By whom and when subpoenas may be issued.

Section 100. The president, or officer of every court-martial, or court of inquiry, shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailers and constables are hereby required to execute any precept or process issued by such president or officer of the court for that purpose.

Power to administer oaths, &c.

Sheriffs, &c., to execute precepts, &c.

Penalty for disobeying subpoena.

Section 101. Every witness not appearing in obedience to such subpoena, when duly served and not having a sufficient or reasonable excuse, shall forfeit to the Commonwealth a sum not less than ten, nor more than fifty dollars, for each default; and the president or officer of such court shall, from time to time, report to the district attorney the names of such delinquent witnesses, together with the names and places of residence of the persons serving such subpoena, the better to enable him to prosecute for such forfeiture.

Names, &c., of delinquent witnesses to be reported to the district attorney.

Attachment to compel attendance of witnesses may be issued.

Section 102. Whenever it shall appear to the satisfaction of any court-martial, or court of inquiry, by proof made before such court, that any person, duly subpoenaed to appear as a witness before said court, shall have refused or neglected, without just cause, to attend as such witnesses, in conformity to such subpoena, and the party, in whose behalf such witness shall have been subpoenaed, shall make oath that the testimony of such witness is material, such court, or the president, or officer thereof, shall have power to issue an attachment to compel the attendance of such witness.

Execution of attachment.

Fees and costs.

Section 103. Every such attachment shall be executed in the same manner as a warrant, and by the sheriff, or a constable of the county; and the fees, for serving the same, shall be paid by the person against whom the same shall have been issued, unless he shall show reasonable cause, to the satisfaction of such court, for his omission to attend, in which case the party requiring such attachment shall pay the costs; such costs shall be ascertained by the court, which may thereupon issue an execution for the collection against the person liable to pay the same, and which may be collected as other executions are collected, by said sheriff or constable.

How collected.

Fines and penalties to be paid into the State Treasury.

Neglect or refusal to execute any process, or to pay over fines, &c., to be deemed a misdemeanor.

Penalty.

Section 104. All fines and penalties, imposed and collected through the sentences of courts-martial, shall be paid into the Treasury of the Commonwealth; and the neglect or refusal of any marshal, sheriff, constable or jail warden to execute any process, or to make proper return of all fines and penalties collected, shall be deemed a misdemeanor, and shall subject the offender to a prosecution by the proper district attorney, and to a penalty, upon conviction of each offense, of one hundred dollars, to the use of the Commonwealth.

Failure to perform duty subjects offender to a trial by a general court-martial.

Section 105. Any officer or soldier failing to appear upon any occasion of duty, to which he shall be ordered by his proper commanding officer, shall be subject to a trial by a court-martial, and upon conviction, failing to render good and sufficient cause therefor, he shall

§105. Act of Assembly approved June 10, 1893. Original act of April 13, 1887, read as follows:

"Any officer or soldier failing to appear upon any occasion of duty, to which "he shall be ordered by his proper commanding officer, shall be subject to a trial

Punishment.

be sentenced to pay such fine, or undergo such other lawful punishment, as such court-martial may direct.

Officers under arrest to be suspended.

Resignation under charges.

Section 106. Officers under arrest shall be suspended from exercising the duties of office, and resignations tendered under charges, when forwarded by any commander, will always be accompanied by a copy of the charges, or, in the absence of written charges, by a report of the case, for the information of the Commander-in-Chief.

Forms, &c., in all courts-martial.

Section 107. The forms, practice and procedure in all courts-martial and courts of inquiry shall, except as herein otherwise prescribed, be adopted and conducted as in similar tribunals in the United States army, unless altered, amended or modified, from time to time, by orders from the Commander-in-Chief.

Compensation of members of courts-martial.

Section 108. Judge advocates, and members of courts-martial and courts of inquiry, and their marshals, shall be allowed per diem pay, as per military rank, for time actually employed in the duties assigned them.

Transportation.

Transportation shall be furnished them, as well as to all prosecutors, prisoners, witnesses, marshals,

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"by a general court order, and upon conviction, failing to render good and suffi-
"cient cause therefor, he shall be sentenced to pay such fine, or undergo such
"other lawful punishment as such court-martial may direct."

§108. Witnesses' Fees at Military Courts.

"No provision is made in our Military Code—the act of April 13, A. D. 1887—
"regulating fees of witnesses who are compelled to attend our Military Courts.
"In the endeavor to enforce the highest and best discipline in the National Guard,
"which is the desire animating its officers to-day, the convening of courts martial
"becomes of more frequent occurrence, and the expense incident to the admin-
"istration of justice, is the concern more than ever of those who manage its
"affairs. The modern tendency in civil courts is to the end that the cost of liti-
"gation should be lessened rather than increased.

"Inasmuch as every citizen enjoys certain advantages in the protection which
"civil society affords, he must be subjected at times to inconveniences and annoy-
"ances in his individual comfort in order to maintain the laws which in turn pro-
"tect him. For many inconveniences the law has provided no compensation, for
"others it has, although possibly often inadequate. In the discharge of duty
"to the laws and to society, men must leave private and lucrative employment
"to serve as jurors and often as witnesses. Their compensation is not graded
"by their wealth, rank or station, nor is it computed by the sacrifice made in
"business by absence from it.

"In the silence maintained by the framers of the Military Code of Pennsylvania,
"they unquestionably felt that the fees due to witnesses in attendance upon
"courts-martial, should be the same as those which for ages have been deemed
"a sufficient compensation in the civil courts. In the United States Army the
"enlistment assumes that the witness is always in the service and he receives no
"per diem, but simply the transportation to and from the place or places of the
"holding of the court. In the act of April 13, 1887, section 108, provision is made
"for the transportation of prosecutors, prisoners, witnesses, &c., to and from
"the place or places designated for the meetings of said courts, and in section
"3, of said act, 'The organization of the National Guard shall conform generally
"to the provisions of the laws of the United States,' and the system of discipline
"(which includes the discipline afforded by courts-martial) and exercises shall
"conform, as nearly as may be, to those of the army of the United States. Wit-
"nesses' fees therefore unprovided for in our act, would, in conforming to the
"United States Army regulations, not be allowed where attendance upon court-
"martial was required whilst the soldier was in camp or in active service at any
"place. He would only be furnished with transportation and his per diem pay
"would take the place of witness fees. Section 108 also provides that 'judge
"advocates, and members of courts-martial and courts of inquiry, and their
"marshals shall be allowed per diem pay, as per military rank, &c.,' and stops
"there. If witnesses were to be paid, as per military rank, would it not specifi-
"cally say so? Not to fix their pay, plainly leaves the amount they are to receive
"open.

sheriffs and constables, to and from the place or places designated for the meetings of said courts. The fees of sheriffs and constables, for serving the processes provided for in this act, shall be the same prescribed by law for similar processes of a civil nature, and shall be paid out of the appropriation for the support of the National Guard.

Fees of sheriffs, &c.

How to be paid.

Section 109. Every able-bodied male citizen resident within this State, of the age of twenty-one years and under the age of forty-five years, excepting officers and enlisted men in the National Guard and persons exempted by this act, and excepting idiots, lunatics, common drunkards, vagabonds, paupers and persons convicted of any infamous crime, shall be enrolled in the militia; and persons so convicted, after enrollment, shall be forthwith dropped from the roll.

Who shall be subject to military duty.

Exemptions.

Section 110. In addition to the persons absolutely exempted from enrollment in the militia, by the laws of the United States, the following persons are exempted from military duty, namely: The members of the Legislature and the officers thereof, the Secretary of the Commonwealth, Attorney General, State Treasurer, Surveyor General, Auditor General, State Librarian, superintendent of common schools and all the judges of the several courts of this Commonwealth, sheriff, recorder of deeds, register of wills, prothonotary, district attorney and clerks of the courts of this Commonwealth.

Additional exemptions.

Section 111. Assessors shall annually, and at the same time they are engaged in taking the assessment or valuation of real and personal property, in their respective cities, wards, boroughs or townships, make a list of persons living within their respective limits, liable to enrollment, and place a certified copy in the office of the county commissioners of each county of the State, whose duty it shall be to record said roll or list of names, in a book to be provided for that purpose, in the same manner as other books of record are provided; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded, that they have been enrolled in the militia.

Assessors to make annually a list of persons liable to enrollment.

Record thereof to be kept in the office of county commissioners.

"The Legislature certainly did not intend that witnesses should be paid accord-"ing to their military rank. They knew the amount of the appropriation for the "annual current expenses of the National Guard, and they too fixed the per diem "of the commissioned officers, and therefore it is reasonable to infer, that they "could foresee the ruinous cost of holding courts-martial, if witnesses should be "paid according to their military rank, and receive transportation besides to and "from the place or places of holding courts. It is clear that in the Legislative "mind, because it provides for the pay of those who constitute the court, that the "witnesses should be furnished transportation and be paid as witnesses are in "civil courts, which has been regarded as adequate and has the sanction of usage. "The testimony of a Brigadier General is no more valuable than that of a private "enlistment, when the truth is to be established. The pecuniary loss to colonels, "by reason of their absence from business, is no greater than it is to the rank and "file. The power of the subpoena is equally potential over all and so their com-"pensation should be equal.

"The pay of civilian witnesses should be the same as in civil courts of law."—*Judge Advocate General, N. G. P., August 14, 1896.*

Notice of enrollment to be put up in three public places.

Section 112. As soon as the roll is completed, the assessors shall forthwith cause notices thereof to be put up in three of the most public places in the city, ward, borough or township, which notices shall set forth that the assessors have made their roll of all persons liable to enrollment, according to law, and that a copy thereof has been left for record in the office of the county commissioners, where the same may be seen or examined by any person interested therein, until some day and place, to be specified in such notice, when and where the said assessors and commissioners of the county will meet to view such enrollment. Such review shall be made at the same time and place the said assessors and commissioners meet to review the assessment of real and personal property, or for appeals.

Assessors and commissioners to review such enrollment.

Persons claiming exemptions to make affidavit of facts.

Section 113. Any person claiming that he is not liable to military duty on account of some physical defect or bodily infirmity, or that he is exempt from the performance of military duty by any law of this State or of the United States, may, on or before the day specified in such notice and not after, deliver to said assessors an affidavit, stating such facts on which he claims to be exempt or not liable to do military duty. Such affidavit may be made before any person authorized to administer oaths; and the assessor shall cause all such affidavits to be filed in the office of the county commissioners; and if any person shall swear falsely in such affidavit, he shall be guilty of perjury.

Affidavits to be filed.

False swearing to be perjury.

Commissioners to determine on exemptions.

Section 114. On the day so specified, county commissioners shall meet and determine who are exempt or not liable to do military duty; and in a column prepared for that purpose, in such roll, opposite the name of each person not liable to do duty, shall insert "exempt," or "not liable," as the case may be; and, opposite the names of all members of uniformed companies on such roll, shall insert "U C;" and against the name of any military officer in commission and liable to do duty, the title of his office; and shall also insert against the names of persons between the age of eighteen and twenty-one years, "minor;" but if such person will have arrived at the age of twenty-one years on or before the fifteenth day of October following such enrollment, then the designation last above provided need not be made.

And make entries on roll designating liability and exemption.

Lists of exempts to be made, certified and filed in the office of the county commissioners.

Section 115. The said commissioners shall, at the time when they shall meet to review their enrollment, and for appeals, make a certified list of the names of all persons whom they shall determine to be exempt, or not liable to do military duty, and shall file the same in their office, for the future examination of the assessors and commissioners.

Annual report of whole number enrolled to be made to the Adjutant General.

Section 116. The commissioners in each county shall, each year, carefully ascertain, from the corrected assessment and military rolls, the whole number of per-

sons enrolled as liable to perform military duty, including all members of military companies, and shall report the same to the Adjutant General on or before the first day of November in each year.

Affidavit of assessors.

Section 117. When the assessors shall have completed their assessment-roll, they shall sign the same, and shall attach thereto an affidavit, substantially as follows: "The undersigned, assessor, or assessors, of the city, borough, ward or township of , in the county of , being sworn or affirmed, say that they have made strict and diligent inquiry to ascertain the names of all persons required to be enrolled, as liable to military duty, by the provisions of this act, residing in the district; that the roll hereto annexed is, as near as the deponent, or deponents, can ascertain, a correct roll of all persons residing in said district, who are liable to be enrolled." The said affidavit shall be taken before any officer authorized by law to take affidavits, whose duty it shall be to take the same, without fee or reward; the said assessor or assessors shall then deliver said roll to the county commissioners, at their next meeting, and it shall be called "the military roll" of said district.

Before whom to be taken.

Roll to be delivered to the county commissioners, and designated "The Military Roll."

Penalty for neglect of duty by assessors, commissioners or clerks.

Section 118. The assessors, commissioners or clerks, who shall refuse or neglect to perform any of the duties required of him or them by this act, shall forfeit and pay the sum of not more than two hundred dollars, to be recovered in the name of the Commonwealth; and, if any assessor, commissioner or clerk shall neglect or refuse to perform such duties as are hereby required, he shall be deemed guilty of a misdemeanor; and such penalty, when paid or collected, shall be paid into the treasury of the county. And it shall be the duty of the district attorneys of the several counties, on complaint made, to prosecute any assessor, clerk or commissioner who shall neglect or refuse to perform any of the duties required of him by this act; the costs of any such prosecution, if not collected from the delinquent, shall be paid by the proper county.

Appropriation of penalties.

Duty of district attorneys.

Costs of prosecution.

Compensation of assessors.

How paid.

Section 119. The assessors shall be paid for their services in making the enrollment required, et cetera, at the rate of three cents for each and every person so enrolled and liable to do military duty, by the several cities and counties, in which such assessment is made.

Information to be given to the assessors by keepers of taverns and boarding-houses.

Penalty for refusal to inform asessors.

Section 120. Keepers of taverns or boarding houses, and masters and mistresses of dwelling houses, shall, upon application of the assessors within whose bounds their houses are situated, or of persons acting under them, give information of the names of persons residing in their houses, liable to enrollment or to do military duty, and every such person shall upon like application give his name and age; and if such keeper, master, mistress or person, refuses to give such information, or gives false information, such keeper, master or

How recoverable.

mistress, shall forfeit and pay twenty dollars, and such person shall forfeit and pay twelve dollars, to be recovered on complaint of any of the assessors.

When enrolled militia shall be liable to active duty.

Section 121. The enrolled militia shall be subject to no active duty, except in case of war, invasion, the prevention of invasions, the suppression of riots, and to aid civil officers in the execution of the laws of the Commonwealth; in which cases, the Commander-in-Chief shall order out for actual service, by draft or otherwise, as many of the militia as necessity demands.

Organization for active service.

Section 122. When the militia are so ordered out, or have volunteered for actual service, they shall be mustered into existing or new companies, battalions, regiments, brigades and divisions; said new companies, battalions, regiments, brigades and divisions shall be numbered, and a record thereof made in the office of the Adjutant General, and shall be officered, governed and disciplined according to the laws of the State and the United States; and the State shall furnish arms and equipments for each non-commissioned officer and private, and pay them until their term of service expires.

State to furnish arms, equipments and pay.

Cities and counties to provide ordnance stores and camp equipage.

Section 123. When the Commander-in-Chief deems it necessary, he shall require cities and counties to provide, in some suitable place therein, such quantity of ordnance stores and camp equipage as may be requisite, and keep the same until such requirement is revoked. Every city or county, so neglecting to comply with such requisition, shall forfeit and pay not exceeding five hundred dollars, which sum, when collected, shall be paid into the State Treasury.

Penalty for neglect.

Punishment for neglect to appear for active duty, &c.

Section 124. Every soldier ordered out for active duty, or who shall volunteer or be drafted, who does not appear at the time and place designated by the proper authority, or who has not some able-bodied and proper substitute at such time and place, or does not furnish a reasonable excuse for such non-appearance, shall be liable to such punishment as a general court-martial may, upon conviction, determine.

Adjutant General authorized to employ clerks, &c.

Compensation.

Payment of troops and other military expense.

Appropriation.

Section 125. The Adjutant General may, with the consent of the Commander-in-Chief, employ such clerical and other force, as may be required in his Department, who shall be paid such rates of compensation as may be deemed just and proper; he shall pay the troops, and all other expenses authorized by this act, by warrants, drawn by him upon the Treasurer of the Commonwealth, payable out of any moneys in the Treasury, not otherwise appropriated, and the sum, necessary therefor, is hereby appropriated annually for said purpose, subject to the limitation contained in the forty-eighth section.

Paymaster to be appointed by the Governor.

Duties, rank and pay.

Section 126. The Governor is hereby authorized to appoint a paymaster, who shall give the same security and perform the same duties as are required of paymasters in the military service of the United States, and

hold the rank and receive the pay of major, while in actual service.

No civil process to issue against persons in service.

Section 127. No civil process shall issue or be enforced against any person mustered into the service of this State, or of the United States, during the term for which he shall be engaged in such service, nor until thirty days after he shall have been discharged therefrom: Provided, That the operation of all stautes of limitations shall be suspended upon all claims against such person during such term.

Proviso.

Medical and staff officers for actual service.

Section 128. The Governor of this Commonwealth is hereby authorized to appoint medical and other staff officers, necessary to the wants and efficiency of the militia of this Commonwealth, now or hereafter to be called into actual service of the State or United States.

Adjutant General to notify the quartermaster and commissary generals of the points of rendezvous, when the militia is called into service.

Section 129. Whenever the enrolled militia of this Commonwealth shall be called into service, by the requisition of the President of the United States, or the proclamation of the Governor, it shall be the duty of the Adjutant General to notify, in writing, the quartermaster general and commissary general of the point or points where the men are to rendezvous, with the number, as near as may be; and said officers shall forthwith advertise for proposals for supplying to the Commonwealth such supplies as may be necessary for furnishing the troops with rations and all other stores named in and provided by the laws or regulations of the United States; and proposals to be directed to the said commissary general and quartermaster general respectively, and to be opened, after five days' notice, and the contracts to be awarded to the lowest bidder by the proper officer inviting said proposals, and adequate security to be taken for the faithful performance of the contract, before the same is awarded; and said officers shall furnish and keep on file, in their several departments, for public inspection, a list of all the proposals offered, including those rejected as well as those awarded; and before the acceptance of any provisions or other military stores of any kind whatsoever, purchased upon contract as hereinbefore provided, it shall be the duty of the quartermaster general or commissary general, as the case may be, in connection with the Auditor General and State Treasurer, to appoint, from

Proposals for supplies to be advertised.

Opening of proposals and award of contracts.

List of proposals to be filed.

Inspectors of military stores to be appointed.

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§129. Opinion rendered by Judge Advocate General, N. G. P., Aug. 9, 1894, as to the power of the President to call into the service of the United States the National Guard of Pennsylvania:

"I entertain no doubt but that such power is clearly vested in the President "under the Constitution of the United States and several statutes passed by Con-"gress by virtue of said provisions in the Constitution.

"Article two, section second, of the Constitution provides that the President "shall be, inter alia, commander-in-chief of the militia of the several states when "called into the actual service of the United States.

"Article one, section eight, provides that Congress shall provide for calling "forth the militia to execute the laws of the Union, suppress insurrections and "repel invasions.

"The act of February 28, 1795, section 1642, revised statutes of the United States, "passed in pursuance of said authority vested in Congress, provides, inter alia, "that whenever the United States are in imminent danger of rebellion against

time to time, as required, one or more disinterested and competent inspectors, familiar with the value and quality of the provisions or military stores so contracted for, whose duty it shall be to examine and accept or reject the same, and, if accepted, to give a certificate thereof to the contractor or venders; and no bill rendered for any such provisions or stores shall be paid, until so certified and approved. The inspectors so appointed shall each receive five dollars per day for every day necessarily employed in discharge of their duties, and shall severally be sworn or affirmed to discharge their duties with fidelity.

Their duties.

Their compensation.

"the authority of the government of the United States, it shall be lawful for the "President to call forth such number of the militia of the State or States most "convenient to the place of danger or scene of action as he may think proper.

"The same act, section 1644, provides that the militia, when called into the "actual service of the United States for the suppression of rebellion against and "resistence to the laws of the United States, shall be subject to the same rules "and articles of war as the regular troops of the United States.

"The act of 17th of April, 1862, section 1645, revised statutes of the United "States, provides the mode of organization of the militia when called into the "service of the United States.

"It will thus be seen that ample provision is made under the Constitution and "the statutes for the calling into the actual service of the general government "of the State militia, and its government and control while in such service.

"The constitutionality of the act of February 28, 1795, has been attacked in a "number of cases before the Supreme Court of the Uinted States, and notably in "the case from Pennsylvania of Houston vs. Moore (5th Wharton). In that case "the State militia having been called upon by the President for active service "under the general government, Houston, a private in the State militia, refused "to obey the order. He was duly tried by court-martial and convicted. An ap-"peal was taken to the courts of the United States and the whole question most "ably and completely reviewed by all the Justices of the Supreme Court in "separate opinions, in all of which the right of the President to call upon the "State militia was recognized and affirmed. The case may be regarded as a "leading one, and completely settling the law upon the points at issue.

"As to the method through which the President shall call upon the State "militia for active service, it would seem that no prescribed form was necessary, "and that under the decision in Houston vs. Moore, it was within the power of "the Secretary of War to make a requisition upon the Governor in writing for "the services of the State militia.

"The act of 13th of April, 1887, under which the National Guard of the State "is organized, in no wise alters the status heretofore existing, and under its "terms the militia of the Commonwealth are distinctly organized and styled the " 'National Guard of Pennsylvania.' The two terms are to be regarded, therefore, "as synonymous.

"Section 3 of this act provides that the organization of the National Guard "shall conform to the provisions of the laws of the United States.

"Section 39 provides that the Adjutant General of the State shall make a return "of the militia of the State, with their arms, accoutrements and ammunition "to the President of the United States.

"Section 65 provides for obedience to the rules, regulations, etc., of the army of "the United States.

"Section 88 provides for the jurisdiction and procedure of court-martials, inter "alia, when the National Guard shall be called into the service of the United "States.

"Section 28 makes reference to the calling of the militia into the actual serivec "of the United States.

"Section 129 also makes provision concerning the same.

"Section 132 refers to a requisition by the President.

"It will thus be seen that the aforesaid law under which the National Guard "is organized and governed distinctly recognizes the relation of the Guard "to the National Government, and provides for its being called into the service "of the United States.

"I am clearly of the opinion that it is within the power, and that under the law "it is the duty of the Governor at all times to recognize the requisition of the "President of the United States, or the lawfully constituted authorities of the "General Government, calling the National Guard of the State into the service of "the General Government."

Hospital department.

Section 130. There shall be a hospital department, which shall be supervised by the surgeon general; and to each division, when in actual service, there shall be a hospital surgeon, with the rank of major; and to each brigade, when in actual service, a hospital surgeon, with the rank of captain; said officers to be appointed and commissioned by the Governor, and to be first examined and recommended for appointment by the surgeon general, or a board of such other surgeons, not exceeding three, as he may direct. The rank of all said officers shall not entitle them to promotion in the line, nor shall it regulate their pay and rations, except when in actual service, under a requisition from the President of the United States, or the proclamation of the Governor. And all surgeons and assistant surgeons, now or hereafter to be appointed, shall be examined by the surgeon general, or a board of surgeons, not exceeding three, as he may direct, and the qualifications and fitness of all surgeons and applicants for appointments as such shall be reported in writing to the Governor.

Rank and pay of officers.

Qualifications.

Settlement of bills.

Section 131. Before the settlement and payment of any bill by the State Treasurer, the Adjutant General shall require, except for incidental expenses, or when it may be impracticable, an affidavit taken before a proper officer of this Commonwealth, to the following effect, namely:

Form of affidavit to be attached to bills.

City, or county of , ss: Personally appeared before me, a justice of the peace, or notary public, in and for the said city or county, , of the firm of , who having been according to law, said that the above account is correct; that the articles therein charged were furnished to the Commonwealth of Pennsylvania on the order of the head of the proper bureau, and that the prices charged for the same are the actual wholesale cash prices charged for goods of like quality to other customers, and no more; that no commission, abatement or allowance whatever has been or is to be given to any person concerned in the ordering or purchasing of said articles, or any other person whomsoever; and that the said articles are of the quality, size and quantity mentioned in the said account, and subscribed before me, this day of one thousand eight hundred and

Certificate from head of bureau to accompany all accounts.

Every account shall be accompanied by a certificate from the head of the proper bureau, that the account is correct, that the articles were furnished on his order, and supplied as charged: Provided, That any person who shall be convicted before any court of record in this Commonwealth of wilful perjury, under the provisions of this section, shall suffer, in addition to the penalties now provided by the laws of this Commonwealth against perjury, the forfeiture of the whole amount of the articles falsely charged for, one half of

Punishment of perjury under this section.

Forfeiture of account, and appropriation thereof.

which amount shall go to the person or persons who shall give information and shall prosecute such charge to conviction, and the other half shall go to the military fund of this Commonwealth.

When volunteer soldiers may leave the State.

Section 132. It shall not be lawful for any volunteer soldier to leave this Commonwealth, as such, unless he shall have been first accepted by the Governor of this State, upon a call, under a requisition of the President of the United States, made upon the Governor direct for troops for the service of the United States; and no volunteer soldier shall be allowed by the Governor to leave the State, until fully armed and equipped for effective service.

Governor authorized to prescribe rules and appoint officers for drafting the militia.

Section 133. The Governor be and is hereby authorized to form, adopt and prescribe such rules and regulations, and appoint such officers and fix their compensation, for the purpose of drafting the militia, when such process may be required, as to him may seem best and most expedient in the premises.

Existing military organizations preserved.

Section 134. Nothing herein contained shall be construed as effecting the right of any troop of cavalry, battery of artillery, or company of infantry, organized prior to one thousand eight hundred and sixty-one, and since continuously maintained, to preserve their respective organizations, with their original vested or chartered rights, privileges and immunities, and said organizations shall be deemed legal organizations, in addition to the number of companies provided for in the second section of this act: Provided, That such organization shall be, in all things, subject to the orders of the Commander-in-Chief, and the provisions of this act.

But subject to orders of the Commander-in-Chief and this act.

Repeal of prior acts.

Section 135. From and after the passage of this act, the acts of General Assembly, entitled,

April 21, 1858.

"An act for the regulation of the militia of this Commonwealth," approved twenty-first April, one thousand eight hundred and fifty-eight;

April 12, 1861.

"An act for the better organization of the militia of the Commonwealth," approved twelfth April, one thousand eight hundred and sixty-one;

April 18, 1861.

"A supplement to the act, entitled 'An act for the better organization of the militia of this Commonwealth,' approved twelfth April, one thousand eight hundred and sixty-one," approved eighteenth April, one thousand eight hundred and sixty-one;

May 15, 1861.

"A further supplement to an act for the regulation of the militia of this Commonwealth, approved April twenty-first, one thousand eight hundred and fifty-eight," approved fifteenth May, one thousand eight hundred and sixty-one;

May 15, 1861.

"An act relative to military expenses in certain counties of this Commonwealth," approved fifteenth May, one thousand eight hundred and sixty-one;

May 4, 1864.

"An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsyl-

vania," approved the fourth May, one thousand eight hundred and sixty-four;

"A supplement to the act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania, approved May four, one thousand eight hundred and sixty-four," approved twenty-second August, one thousand eight hundred and sixty-four; August 22, 1864.

"A further supplement to the act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania, approved May four, one thousand eight hundred and sixty-four," approved twenty-fifth August, one thousand eight hundred and sixty-four; August 25, 1864.

"'A supplement to an act for the regulation of the militia of this Commonwealth,' approved April second, one thousand eight hundred and twenty-two, and to an act, entitled 'An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania,' approved May fourth, one thousand eight hundred and sixty-four, and also to the supplement thereto, approved August twenty-second, one thousand eight hundred and sixty-four," approved fifteenth February, one thousand eight hundred and sixty-five; February 15, 1865.

"An act to exempt persons, who have been in the military service of the United States and been honorably discharged therefrom, from the payment of bounty and per capita tax and military fines," approved March thirtieth, one thousand eight hundred and sixty-six; March 30, 1866.

The eleventh section of "An act to provide for the ordinary expenses of the government and other general and specific appropriations," approved eleventh April, one thousand eight hundred and sixty-six. Section 11, act of April 11, 1866.

"A further supplement to an act approved May fourth, one thousand eight hundred and sixty-four, for the organization, discipline and regulation of the first division of the militia of the Commonwealth of Pennsylvania," approved April first, one thousand eight hundred and sixty-seven; April 1, 1867.

"A further supplement to an act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania, approved May fourth, one thousand eight hundred and sixty-four," approved seventh April, one thousand eight hundred and seventy; April 7, 1870.

"A further supplement to an act, entitled 'An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania,' approved May fourth, one thousand eight hundred and sixty-four, and to the various supplements thereto," approved June second, one thousand eight hundred and seventy-one; June 2, 1871.

"A further supplement to the act of fourth of May, one thousand eight hundred and sixty-four, entitled 'An act for the organization, discipline and regulation of April 15, 1873.

the militia of the Commonwealth of Pennsylvania,'" approved the fifteenth of April, one thousand eight hundred and seventy-three;

May 14, 1874. "A further supplement to an act, approved Anno Domini one thousand eight hundred and sixty-four, entitled 'An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania,'" approved fourteenth May, one thousand eight hundred and seventy-four;

June 12, 1878. "An act amending the provisions of the act, entitled 'An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania,' approved May fourth, one thousand eight hundred and sixty-four, and supplements thereto," approved twelfth June, one thousand eight hundred and seventy-eight;

April 25, 1879. "An act providing for the completion of the equipment of the National Guard of Pennsylvania, and making an appropriation therefor," approved twenty-fifth April, one thousand eight hundred and seventy-nine;

June 6, 1879. "A further supplement to the several acts providing for the discipline and conduct of the National Guard," approved sixth June, one thousand eight hundred and seventy-nine;

June 8, 1881. "An act amending the provisions of an act, entitled 'An act for the organization, discipline and regulation of the militia of the Commonwealth of Pennsylvania,' approved May fourth, one thousand eight hundred and sixty-four, and supplements thereto," approved eighth June, Anno Domini one thousand eight hundred and eighty-one;

General repeal. And all other acts, or supplements, or parts thereof, inconsistent with or supplied by the provisions of this act, be and the same are hereby repealed.

Approved: The 13th day of April, A. D. 1887.

JAMES A. BEAVER.

AN ACT

Approved May 15, 1893, for the establishment and government of a State Naval Militia.

Section 1. Be it enacted, &c., That when in conformity with the military code an enrollment of persons subject to military duty shall be made, there shall be separately enrolled and designated as Naval Militia in such districts as the Commander-in-Chief may designate, all seafaring men of whatsoever calling or occupation, and all men engaged in navigation of the rivers, lakes and other waters, all persons engaged in the construction and management of ships and crafts or any part thereof upon such waters, together with ship owners, members of yacht clubs, and all other as-

sociations for aquatic pursuits, and all ex-officers and former enlisted men of the United States Navy subject to the existing qualifications for and exemption from enrollment for military service in the National Guard.

Section 2. As a part of the Naval National Guard authorized by law and in addition to the National Guard, there may be Naval Battalions organized by voluntary enlistment for the defense of the coasts, lakes and harbors. In time of peace there shall not be maintained more than two such battalions organized as herein provided, and which shall constitute a regiment to be known as the Naval Force of the State of Pennsylvania, but the Commander-in-Chief shall have power in case of war, insurrection, invasion or imminent danger thereof to increase the said force beyond such limit of two battalions, and to organize the same as the exigencies of the service may require. The Commander-in-Chief may alter, annex, divide, consolidate or disband the said Naval Force or any battalions or divisions thereof, whenever in his judgment the efficiency of the State service will be thereby increased.

Section 3. The Naval Force shall be commanded by a captain, who shall be chosen and commissioned as soon as two battalions are fully organized. To each battalion there shall be one commander, who shall command the same, one lieutenant commander to act as executive officer, and one lieutenant to act as navigator. Each battalion shall consist of four divisions or companies, and an engineer corps. To each division there shall be one lieutenant to command the same, two lieutenants junior grade, two ensigns, and forty-two petty officers and seamen as a minimum, and eighty-four petty officers and seamen as a maximum. To each engineer corps there shall be allowed one lieutenant to command the same, one ensign and twelve petty officers and seamen as a minimum, and twenty petty officers and seamen as a maximum. To each battalion and division thereof there shall be allowed such and so many petty officers as the Commander-in-Chief may from time to time determine.

Section 4. The captain shall have power to appoint a staff to consist of one aide, one ordnance officer, one chief of engineers, one paymaster, and one surgeon, each with the rank of lieutenant. The commanding officer of each battalion shall have power to appoint a staff to consist of one aide, one paymaster, and one surgeon, each with the rank of lieutenant junior grade, and one assistant surgeon with the rank of ensign.

Section 5. Commissioned and non-commissioned officers of the Naval Force shall be chosen and shall qualify as required by the existing military code of Pennsylvania for officers of the same relative rank in the National Guard. The rank given in this act is naval rank as the same now exists in the Navy in the United States.

Section 6. Officers and enlisted men of the Naval Force shall perform such duty or service as may be ordered by the Commander-in-Chief, and shall be paid the same compensation as is allowed to officers and enlisted men have the same relative rank or position in the National Guard for performing similar duty or service, but they shall not receive any compensation from the State for duty performed by way of instruction or drill or otherwise for which they shall receive compensation from the United States. The uniform of the Naval Force and the insignia and designation of grade and rank shall be prescribed by the Commander-in-Chief, who may change and modify the same from time to time.

Section 7. The system of discipline, routine of duty, and exercises of the Naval Force shall conform generally with the existing laws governing the National Guard of the State of Pennsylvania, so far as the same may apply to the Naval Force, and where the same does not apply the discipline, duty and exercises shall conform generally to the laws, customs and usages governing the Navy of the United States. The Commander-in-Chief is hereby authorized to make such rules and regulations from time to time as he may deem expedient for the government assignment and instruction of the Naval Force, but such regulations shall conform to this act and as nearly as practicable to those governing the United States Navy, and when promulgated they shall have the same force and effect as the provisions of this act. The Naval Force shall be subject to the articles and regulations for the government of the United States Navy to the same extent as members of the National Guard are subject to the articles of war and regulations for the government of the United States Army.

Section 8. The appointment, composition and powers of naval boards, delinquency courts, courts of inquiry, and courts martial, shall be as is now provided for in the military code of Pennsylvania for similar bodies in the National Guard.

Section 9. The divisions of each battalion in the Naval Force shall be considered the equivalents of companies of the National Guard, and shall receive the same allowances for armory rent, for rifle practice, for clothing and equipment, as are received by such companies. The battalions shall be treated as battalions in the National Guard, and shall be entitled to all allowances of such battalions for armory rent, rifle practice, clothing and equipment. The Naval Force when organized shall be entitled to all the privileges and allowances of a regiment of the National Guard. The word "armory" as used in this act and in the military code of Pennsylvania, shall be held to include a vessel anchored, moored or secured to the land, while used only as an armory for the purposes of instruction, drill or defense.

Section 10. The members of each battalion and division of the Naval Force may form themselves into an organization, and adopt by-laws in the same manner, with the same powers, and subject to the same limitations as are now prescribed for members of companies in the National Guard.

Section 11. The act, entitled "An act to constitute a battalion to be known as the Naval Battalion of the National Guard of Pennsylvania," approved the twenty-sixth day of April, Anno Domini one thousand eight hundred and eighty-nine is hereby repealed.

AN ACT

Conferring upon municipalities the right of eminent domain for the purpose of appropriating public property for the use of the National Guard of Pennsylvania.

Whereas, Public necessity and safety require that convenient, ample and suitable accommodations be provided for the National Guard of Pennsylvania, and the public welfare would be promoted by furnishing therefor suitable and eligibly located grounds accessible to all persons connected therewith and interested therein, whereby the presence and influence of such guard

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§11. The act of Assembly approved April 26, 1889, and repealed by section 11 of the act of Assembly approved May 15, 1893, is as follows:

AN ACT

"To constitute a battalion to be known as the Naval Battalion of the National "Guard of Pennsylvania.

"Section 1. Be it enacted, &c., That there shall be allowed, in addition to the "companies of the National Guard of the State of Pennsylvania as now provided "by law, not more than four companies of naval militia, which shall constitute "a battalion to be known as the Naval Battalion of the National Guard of Penn-"sylvania.

"Section 2. The officers of this battalion shall consist of a lieutenant com-"mander, whose rank and pay shall assimilate to that of a major of infantry, and "a staff, to consist of one adjutant, one ordnance officer, one paymaster who "shall be the mustering officer, and one surgeon, each with the rank of first lieu-"tenant. They shall be paid the same as battalion staffs in the National Guard. "There shall also be attached to the staff the following petty officers: One "master-at-arms, two yeomen, one hospital steward, one chief bugler, who shall "receive the same pay as the non-commissioned staff of a battalion of infantry.

"Section 3. To each company there shall be one lieutenant commanding, two "second lieutenants, two ensigns, to receive the same pay as captains, first and "second lieutenants, respectively, of infantry; two boatswains' mates, two gun-"ners' mates, two coxswains, two quartermasters and forty-four seamen. All "enlisted men of companies shall receive the pay of enlisted men of companies of "infantry of the National Guard.

"Section 4. The Naval Battalion shall be uniformed as the commander-in-chief "shall direct, out of any appropriations for uniforms or supplies for the National "Guard, and shall be instructed as he may direct, and be subject to the laws and "regulations governing the National Guard. The duty required by law may be "performed afloat.

"Section 5. The companies comprising the Naval Battalion may be raised, as "provided by law, when the United States government shall have furnished arms "and equipments, and a vessel of war for performance of duty required by law." Approved—April 26, 1889.

would the more certainly be known and felt in populous and diversified communities.

And whereas, It will promote the welfare and secure the safety and tranquility of the inhabitants of municipalities by furnishing all proper aid, assistance and comfort to the said National Guard, and this may in many places be done by permitting the said Guard to use and enjoy certain public property in such municipalities, but in some instances such public property may be intended for and limited to other purposes by donation, dedication, appropriation, statute or otherwise, by reason of which limitation such municipalities may be unable to make use of such public property for any other public use or purpose; therefore,

Section 1. Be it enacted, &c., That municipalities of this Commonwealth shall have and are hereby given the right of eminent domain for the purpose of appropriating to themselves, for the use of the National Guard of Pennsylvania, such public lands, easements and public property as may be in their possession or control and used or held by them for any other purpose. Such right, however, shall not be exercised as to any street or highway or wharf, but all other public easements and property may be apropriated and used for the purposes herein provided, any limitation of the use thereof by the municipality, either by donation, dedication, appropriation, statute or otherwise, to the contrary notwithstanding.—Approved June 26, 1895.

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